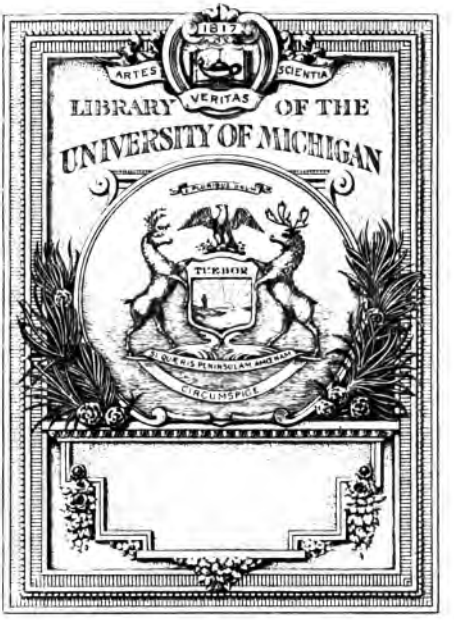
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AN OUTLINE OF THE CLEVELAND CRIME SURVEY

By RAYMOND MOLEY

THE CLEVELAND FOUNDATION

AN OUTLINE OF THE CLEVELAND CRIME SURVEY

CLEVELAND'S PROBLEM OF CRIME

For the year 1930, Cleveland, with approximately 1,081,000 population, had as many murders as London with 8,081,000 population. For every robbery or assault with intent to rob committed during the same period in London there were 17 such crimes committed in Cleveland. Cleveland had as many murders during the first three months of the present year as London had during all of 1930. Liverpool is about one and one-half times larger than Cleveland, and yet in 1930 Cleveland reported 34 robberies for each one reported in Liverpool, and there were the number of murders and manslaughters. Practically the same ratio obtained between Cleveland and Glasgow. There are more robberies and assaults to rob in Cleveland every year than in all England, Scotland, and Wales put together. In 1930 there were 3,327 automobiles stolen in Cleveland; in London there were 508; in Liverpool, 10.

All in all, crime conditions are far more serious in Cleveland than they are in other American cities. In point of volume of crime in relation to size of population Cleveland is neither much better nor much worse than the other municipalities of the United States. It is when we compare Cleveland with cities like London, Glasgow, Liverpool, or almost any other European municipality that enormous contrasts are disclosed. In this respect, therefore, Cleveland's problem is the problem of America.

— Cleveland *Survey Report*

AN OUTLINE OF THE CLEVELAND CRIME SURVEY

THE CLEVELAND FOUNDATION

1308 Swetland Building

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AN OUTLINE *of* THE CLEVELAND CRIME SURVEY

BY

RAYMOND MOLEY

DIRECTOR OF THE CLEVELAND FOUNDATION

PUBLISHED BY

THE CLEVELAND FOUNDATION

FOREWORD

THE Cleveland survey of criminal justice marked the culmination of a long period of growing public distrust in the quality of law enforcement in Cleveland. There had been all the symptoms so common to American cities, "crime waves," official investigations, newspaper crusades, and constant political quarreling over responsibility for conditions. The survey shows that Cleveland's plight was attributable to deeper and more fundamental causes than any personal responsibility. It was rooted in conditions due to the great increase in the complexity of the problem of law enforcement, coupled with the persistent survival of antiquated methods and institutions.

The remedy must come through a long series of reforms and readjustments in all the machinery for law enforcement. To analyze the exact conditions, to point out the reforms and readjustments, and to indicate the responsible agencies to lead this reform were the essential purposes of the survey. This review of the survey and the events which have followed its completion indicate clearly that already the survey has measurably succeeded in its purpose and that the process of careful self-examination is, after all, the most potent means of achieving fundamental social reforms.

This account is, of course, in major part a digest of the survey itself. It has borrowed freely from the published reports, although in some measure new interpretations and arrangements have been made. For the selection, arrangement, and addition of material the author of this summary is alone responsible.

It should be remembered that the conditions herein described were those of the period in which the survey was conducted—the first half of the year 1921. Many changes, both in personnel and method, have since taken place.

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AN OUTLINE OF THE CLEVELAND CRIME SURVEY

THE ORIGINS OF THE SURVEY

THE first demands for a survey of criminal justice came from the welfare agencies of the city. In December, 1919, Professor C. E. Gehlke, of Western Reserve University, secretary of the Welfare Federation Committee on Delinquency, proposed to the Cleveland Foundation that it undertake a survey of the problem of delinquency, adult and juvenile. At that time Dr. Gehlke prepared for the Foundation Committee an outline for a survey of the administration of criminal justice in Cleveland. From this first formulation the plan grew until it was decided to undertake the work which was subsequently conducted along lines indicated by those responsible for the survey, now completed.

A survey of such a subject, and upon so comprehensive a scale, cannot be lightly undertaken in any city at any time. Unless it has a reasonable assurance of the support of a very considerable body of public sentiment, a study penetrating so far into a field infested with intangible and subtle influences cannot hope to succeed. Conditions were probably as unsatisfactory in 1920 as in 1921, but the public did not so profoundly realize it. So the Foundation waited a year for such a sentiment to appear.

On November 10, 1920, Mayor W. S. FitzGerald addressed a letter to the Foundation, asking that there be considered "a general survey of vice and crime conditions . . . to be conducted without bias of any kind and with the sole purpose of developing the facts."

A week later the Cleveland Bar Association, through its executive committee, adopted a resolution requesting the Cleveland Foundation "to conduct a survey of the administration of justice in Cleveland, with particular reference to the treatment of the offender, such a study to be the basis of constructive measures to improve the machinery for the administration of the law." It was resolved further that "the precise scope of the survey and the selection of its personnel be left entirely within the discretion of the Foundation Committee." With this reso-

lution the Bar Association pledged "hearty coöperation not only in making the survey, but in bringing about the adoption of the constructive measures therein recommended."

These requests were followed by formal requests of the same general character from the Chamber of Commerce, the League of Women Voters, the Federation of Women's Clubs, the Welfare Federation, and a number of other organizations and individuals.

THE CLEVELAND FOUNDATION AND ITS WORK

The Cleveland Foundation, which conducted this survey of criminal justice, was founded in 1914. The plan for this, the first of the community trusts, was formulated by F. H. Goff, and brought into existence by formal resolution of the board of directors of the Cleveland Trust Company. It provides a means for the distribution of bequests left by men and women interested in the social welfare of the city of Cleveland. During the early years of its existence its limited funds have been used for comprehensive studies of the life and institutions of the community. Two major surveys have been conducted by the Foundation—one of public education in 1915 and 1916 and one of recreation completed in 1919. In addition to these, the Foundation has conducted and published the results of several minor pieces of research, such as the Cleveland Year Book, an annual publication, and a Directory of Community Activities.

The Cleveland Foundation is governed by a committee, three of the five members of which are chosen by the United States district judge, the probate judge, and the mayor of Cleveland. Two are appointed by the Cleveland Trust Company, the trustee of the funds of the Foundation. Thus a majority of the governing board are chosen by public officials and represent the public.

THE SURVEY

This survey of criminal justice in Cleveland was authorized by action of the Cleveland Foundation Committee on January 4, 1921. Field work was started on February 1 and was completed in June. The reports were written and revised during the summer months of 1921, and were, with one exception, given to the public in September and October. A total of 35 staff workers were employed for various periods of time during the progress of the work.

The total cost of the survey was about $50,000.

THE STAFF OF THE SURVEY

DIRECTORS

ROSCOE POUND
Dean of Harvard University Law School

FELIX FRANKFURTER
Byrne Professor of Administrative Law, Harvard University Law School

SPECIAL DIVISIONS OF INQUIRY

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RAYMOND FOSDICK
Author of American Police Systems

JUDICIAL ADMINISTRATION

REGINALD HEBER SMITH
Author of Justice and the Poor, member of the Boston Bar

HERBERT B. EHRMANN
Member of the Boston Bar

PROSECUTION

ALFRED BETTMAN
Formerly city solicitor of Cincinnati, and special assistant to the United States Attorney General

HOWARD F. BURNS
Of the Cleveland Bar

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BURDETTE G. LEWIS
State commissioner of institutions and agencies of New Jersey

PSYCHIATRY AND MEDICAL RELATIONS

DR. HERMAN M. ADLER
State criminologist of Illinois

LEGAL EDUCATION

ALBERT M. KALES
Formerly professor of law at Harvard University

NEWSPAPERS AND CRIMINAL JUSTICE

M. K. WISEHART
American Magazine, New York

C. E. GEHLKE
Statistical director of the survey

J. W. LOVE
Editorial director

A local advisory committee was chosen. It was made up of 5 citizens. The chairman of this committee was Amos Burt Thompson, member of the Cleveland Bar.

In the process of investigation and in the preparation of reports th survey staff was given complete freedom. When the reports were com pleted, they were submitted to sections of the advisory committee fo criticism and suggestions. They were then submitted, in most cases to the public officials directly concerned, in order that agreement migh be reached upon all matters of fact. For example, the police report wa submitted to the chief of police, the prosecution report to the chie prosecutors. Criticisms were invited, freely given, and carefully con sidered by the authors of the reports. The reports were not alway changed to meet these suggestions, but, in the main, this method was a invaluable aid in arriving at accuracy and fairness. After this searchin process of revision the reports were given to the public.

Several luncheon meetings were held by the Foundation, at which th reports were presented by their authors. At each of these meetings a effort was made to bring together the persons in the community specific ally interested in the report presented. For example, the report o "Medical Relations" was given before the membership of the Academy of Medicine, the police report before many police officials.

The newspaper support which the survey received was a very impor tant factor in its success. The public spirit of all of the daily paper was shown in the fact that many columns of space were invariably give to the reports. This, in spite of the fact that from the standpoint o "news" value reports of this kind are long and technical. The news paper summaries were made by the newspapers themselves, and wer in the main accurately and intelligently prepared. Editorial comment cartoons, and other special forms of emphasis very greatly added t the public influence of the survey.

POLICE ADMINISTRATION

CLEVELAND'S FIRST LINE OF DEFENSE

MR. FOSDICK thus pictures the Cleveland police force of 1921:

"The present police department of Cleveland dates from 1866. Since 1866 Cleveland has grown from a small town to the fifth city in the United States. It has grown not only in size, but in the heterogeneity of its population and in the complexity of its social and business life. From a town in which many people knew each other intimately and thus furnished a substantial degree of self-protection and aid to the police, Cleveland has become, like all other communities of its size in modern times, a city of strangers.

"In contrast with this complex growth of the city the police department of 1921 is little more than a physical enlargement of the department of 1866. . . . . The police department has shown no such vitality, no such capacity to make itself over on a new and improved pattern, no willingness to reshape its methods to modern demands. Instead, it has hewn to the line of tradition, ventured almost nothing in experiment, and copied very little from the experience of other private and public organizations. Today the patrol force is distributed and managed exactly as it was twenty or thirty years ago. There is nothing new in the detective service save faces and a few meager records. Traffic regulation has been developed, but this modern necessity has been met only by draining the department's resources for coping with crime. . . . Practically the same methods are employed for combating crime that were used when Cleveland was just a big neighborhood in which the police knew everybody. . . .

"A general picture of the police service in Cleveland gives the impression of a group of men, singularly free from scandal and vicious corruption, but working in a rut, without intelligence or constructive policy, on an unimaginative, perfunctory routine."[1]

GENERAL ORGANIZATION OF THE FORCE

The survey points out that one of the fundamental troubles with the police force in Cleveland is the ambiguity which the city charter creates in the very important matter of who is the boss of the force. The police

[1] Criminal Justice in Cleveland, pp. 6–9. All references herein made not otherwise noted refer to the consolidated volume containing all of the survey reports, entitled, "Criminal Justice in Cleveland."

of Cleveland are constituted as a division of the department of public safety at the head of which is a director of public safety, appointed by the mayor. At the head of the division of police is a chief of police, appointed by the mayor and subject to civil service rules and regulations. The rank and file of the police personnel are appointed by the director of public safety. In the very important matter of the appointment, discipline, and dismissal of the police officers the chief is actually given very little power. He cannot appoint: he can only suspend and submit his decision to the will of the director of safety, who in turn is subject to being overruled by the civil service commission.

The survey points out that the whole system is admirably suited for the favorite game of passing the buck—an especially useful game where public criticism is involved.

SELECTION AND TRAINING OF PERSONNEL

The outstanding features of present provisions for the selection and training of personnel are as follows:

(*a*) A very large majority of the force are drawn from various types of manual work. Most of these are unskilled or semi-skilled, and few of them have the intellectual equipment necessary for good police work.

(*b*) The men appointed to the police force come in too late in life. They are, in general, over twenty-five years of age, which is somewhat too old to guarantee the proper sort of material for subsequent training. The survey recommends that a maximum of thirty years should be placed upon entrance to the force, while every effort should be made to bring in men under twenty-five.

(*c*) A study of the appointments, resignations, and dismissals shows that there is an excessive turnover in the force. About one-quarter of the new recruits leave during the first year of service, and half of them within four or five years. Because of this fact the force always includes a large proportion of inexperienced men and also, presumably, of dissatisfied men who are looking for an opportunity to leave.

(*d*) The personnel of the department indicates that the Cleveland civil service commission has seemingly been unable to go much beyond a mere sorting out of available applicants to the force. Very little effort has been made to go out into the field and bring in better material.

Police Training School

One of the most commendable achievements in the department has been the creation of a full-time training course of eight weeks for recruits.

The survey suggests that the school be developed in such a way as to become the staff agency of the department serving as a personnel service division. It should take over much of the responsibility for conducting personality tests and determinations of efficiency and of adaptability to certain kinds of police work.

CLEVELAND CONDUCTS WRITTEN EXAMINATIONS FOR PROMOTION

"I ABSOLUTELY split off from the bulk of my professional civil service reform friends when they advocated written competitive examinations for promotion. In the police department I found these examinations a serious handicap in the way of getting the best men promoted, and never in any office did I find that the written competitive promotion examination did any good. . . . When once in office, the best way to test any man's ability is by long experience in seeing him actually at work. His promotion should depend upon the judgment formed of him by his superiors."

—ROOSEVELT, *Autobiography*

PROMOTION AND DISCIPLINE

Promotions are governed entirely by the rules and regulations of the civil service commission, and are based upon written examinations conducted by the commission. The survey points out that the formality and the attention given to purely negative qualities by this system of promotion are such as to allow small opportunity to give credit for really valuable work performed as a policeman. Initiative, zeal in the carrying on of work, ability to get work out of others, creative imagination, are not adequately taken into consideration when promotions are based upon such a test.

The confusion in authority, which has already been described, reaps its most bitter fruit in the loss of morale in the department because of lack of adequate disciplinary power. The survey states that the "whole force needs toning up. It needs to be imbued with vigor and alertness. This means discipline; it means strict observance of the letter of the department regulations. It means the exaction of a full measure of compliance with police duties. This discipline cannot be had when there is

no definite person to whom the men can look for reward for good services performed and to whom they are held accountable when their work has not been well performed."

THE DETECTIVE BUREAU

Detectives are selected from the uniformed force by the chief of police. There are 81 patrolmen now serving as detectives. These detectives are supposed to be the cream of the uniformed force, but, in a test made by the application of the United States Army Alpha Test for mental ability, it was found that the mounted police, the traffic police, and other groups show higher degrees of mental ability than detectives. No one of the entire group of men in the detective force was shown by the mental test to have "very superior" intelligence. About 25 per cent. are possessed of inferior intelligence, which means that they have the mentality of boys from nine to thirteen. This is attested by numerous examples of poor detective work cited by the survey.

THE MODERNIZATION OF POLICE METHODS

The survey points out very definitely that certain changes are needed in the routine operations of the police force in order to bring it into line with the development of the city and modern improvements in police technic. There should be a complete reorganization of police districts, because changes in population and in methods of transportation have completely altered the problems of police work. There should be a reorganization of police beats.

The much mooted question of how many policemen Cleveland should have is not answered definitely because a proper organization of the force will mean a great improvement of service with the present force. The survey points out that Cleveland has 174 policemen per 1,000 population, while Detroit has 194. Cleveland is, from the standpoint of numbers, much behind St. Louis, which has 250 men per 1,000.

GENERAL RECOMMENDATIONS

1. There should be a clear line of responsibility running from a single head through the whole organization. A single leader should be in immediate charge of the force. This leader should, if necessary, be drawn from outside of Cleveland. He should be a civilian administrative head, and he should be paid an adequate salary and given permanent appointment.

2. The personnel of the force should be improved in character. Men should be drawn into the force at an earlier age, and every effort should be made to keep them for a longer time. The maximum age should be thirty, with an attempt made to secure men under twenty-five.

3. Promotion should be put squarely up to the director of police already recommended, who should have entire control over the determination of promotions and should be assisted in this work by a board of promotion made up of members of the force itself, chosen from the higher ranks. This would remove to a very large extent the present authority of the civil service commission in the matter of promotion.

4. In matters involving discipline, the director of police should have final and complete determination.

5. In recruiting the detective force it should be possible to draw men from outside of the force directly into the detective bureau.

6. The patrol service should be reorganized to accommodate the changes which the use of motor equipment demands. There should be more motor equipment used in regular patrol work, patrol booths should be established, police precincts should be consolidated to reduce the number from 15 to seven or eight, and the present patrol beats should be rearranged.

7. There should be a special service division in charge of crime prevention, and other specialized work which has come to be a part of legitimate police interest.

8. There should also be a secretarial division and an adequate system of records.

THE COURTS, THE JUDGES, AND THE PROSECUTORS

THE SYSTEM IN BRIEF

"THE present method of administering criminal law is built upon two court systems, two prosecutors' offices, and a grand jury.

"The criminal division of the Municipal Court has jurisdiction over misdemeanors, violations of city ordinances, and preliminary examinations in cases of felony. A defendant who desires a jury trial in the Municipal Court must claim it seasonably, but there are relatively few such trials.

"When a person is arrested for a felony, the Municipal Court holds a preliminary examination, unless the defendant waives his right to such examination. If the court finds there is probable cause or the examination is waived, the court has the power to 'bind over' to the grand jury. The grand jury sits practically continuously except during July and August. The prosecuting attorney for Cuyahoga County presents evidence to the grand jury, and if a prima facie case is made out, the grand jury returns a 'true bill,' stating the crime for which the defendant is indicted. After this, the case proceeds before a judge of the Common Pleas Court through the usual stages of arraignment, plea, trial, and disposition. In all its essentials the theory of handling felonies is the same as it has been for many generations in village and city alike throughout the United States." (Pp. 231–232.)

THE PATHS AND BY-PATHS

In the graphic manner shown on page 11 the survey has portraye the tortuous process by which society seeks to protect itself against it enemies. To the layman the criminal law means a jury trial in ope court. Thus it is portrayed in romance, newspapers, and the drama But to the criminal lawyer it is a process, nine-tenths of which is operating in the dark, subject to powerful pressures evoked by those who desir to save an accused from punishment.

"In the first place, many offenses are committed for which no one is arrested This is a problem of police administration. After an arrest is made, the polic may release the prisoner because of insufficient evidence, or turn him over t other authorities. In Cleveland there is a practice in the police department o

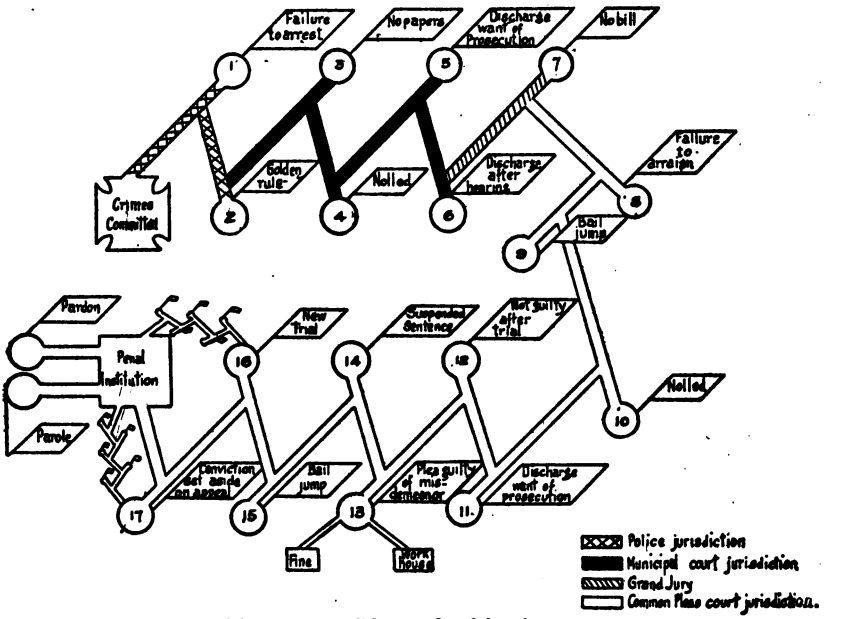


Diagram 1.—The path of justice

releasing, or 'golden-ruling,' first offenders, but this practice is rarely used in felony cases. These matters are all questions of police policy. Once a man is held, however, the judicial processes begin to operate. The police prosecutor may report 'no papers,' in which case the prisoner is released without further proceeding. Or the police prosecutor may move to 'nolle'—*i. e., nolle prosequi*—the case, which also liberates the prisoner. The lower court may find that there is 'no probable cause' and discharge the prisoner. The grand jury may fail to indict a defendant by returning a finding of 'no bill.' If a man is indicted, the prosecuting attorney in the Common Pleas Court may move to 'nolle' the case. The defendant may plead guilty, either on arraignment or by change of plea later. Throughout this procedure there is always the possibility of the defendant jumping bail should his case assume a hopeless aspect." (Pp. 234–235.)

A STUDY IN PULLS AND PRESSURES

Public "demands" for severity do not help much. They merely change the incidence of pressure for leniency. In 1919 a wide-spread clamor for more severity, carefully stimulated by newspapers, brought about a very great decrease in paroles. The survey shows this decrease by printing two pages from the conviction books of the Common Pleas Court. One page, dated 1917, shows that of 35 convictions, the court allowed 24 paroles. Another page taken from 1920 shows only three

paroles among 35 convictions. The lesson taught by this comparison is twofold. It demonstrates the totally unscientific character of parole methods. They are granted, it seems, not because of ascertained and well-considered reasons, but for the purpose of making public demonstrations of compliance with popular clamor. Mr. Dooley's sage observation that the courts "folly the iliction returns" is outdone. The courts anticipate the election returns. This shifting sentiment is thus described in the survey: "In the old game of 'Donkey' the blindfolded player often relies upon the cheers of the onlookers to guide him to the spot where he can pin the animal's tail in its proper place. In like manner the judges, deprived of the opportunity of forming their own judgment upon all the facts, are often prone to follow the clamor of the press and public. When the cry is 'thumbs up,' paroles issue in abundance; but when it is 'thumbs down,' both the good and the wicked travel the same road."

Such a change of policy does not dampen the ardor of the criminal lawyer. He merely shifts his attack to a less conspicuous sector, which soon yields the same result as before. The survey says that there is a sort of Gresham's law in the administration of justice. Just as cheaper currency tends to drive out dearer, so the "easy" agencies tend to oust the "stricter" of jurisdiction. The following diagram shows how the political criminal lawyers met the increasing severity of judges by efforts to get nolles from the prosecutors and thus keep cases out of court. It covers a period of seven years.

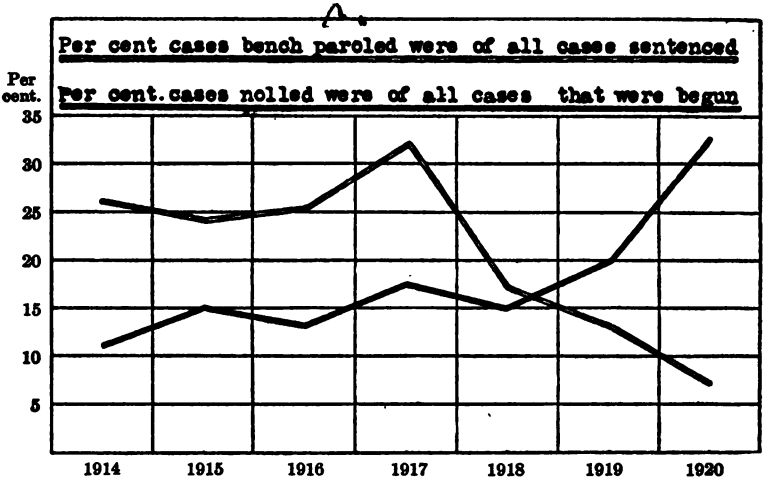
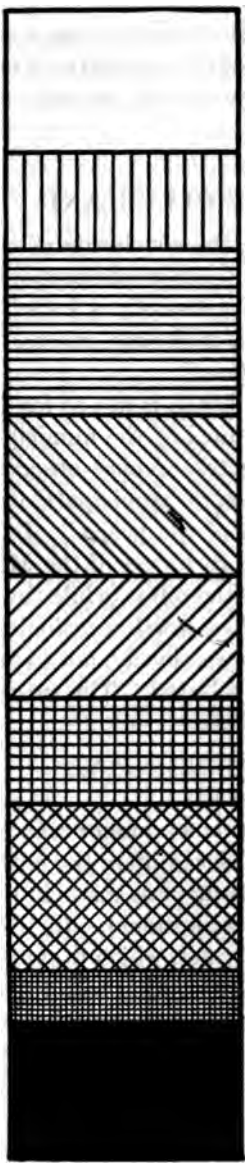


Diagram 2.—Comparison of decline of "bench paroling" with increase of allowing "*nolle prosequi*"

Thus the public, unorganized and short-sighted, gets no real results for its righteous indignation. The political criminal lawyer continues



Of 1,000 Felony Arrests—

127 were disposed of by the police

85 were "nolled" or "no-papered" by the police prosecutor

143 were discharged or dismissed or found guilty of a misdemeanor in Municipal Court

139 were "no-billed" by the grand jury

107 were "nolled" by the county prosecutor

91 made an original plea of guilty

148 changed the plea to guilty

42 were variously disposed of

118 came to trial

Diagram 3.—The disposition of each 1,000 cases of felony arrests

to operate at the old stand. He follows the example of the wise farmer who rotates his crops.

Diagram 3 is based upon a study of the 4,499 felony cases begun in the Common Pleas Court during 1919, supplemented by information supplied by the police department. It shows how far from the truth is the popular conception of cases decided in court with all the traditional formality of a "trial" present. Only one in 10 came to fruition in such surroundings.

THE PERSONNEL OF THE BENCH OF CLEVELAND

As to the judges of the Common Pleas Court, the conclusion of the survey was that, "as a group, the Common Pleas Bench would probably compare favorably with county courts in other metropolitan jurisdictions. Criticism largely centers on its *want of fine traditions, absence of dignity, and lack of independence in thought and action.*"

The survey characterization of the municipal bench is not so favorable. It concludes that, "on the whole, the personnel of the municipal bench is inferior in quality and ineffectual in character. A close observer of the Cleveland courts for years states that the present Municipal Court judges are not much superior to the old justices of the peace." It is the conclusion of the survey that only four of the 10 judges of the Municipal Court measure up to the requirements of the office, while three are mediocre and one apparently has no qualifications worth mentioning.

Of late many thoughtful people have looked very seriously, not to say critically, at the methods by which judges are selected. The survey throws helpful light upon this subject.

The Advent of Non-Partisanship

Up to 1908 the prevailing method of nomination of judges was by party convention, and judges so nominated were placed upon the party ticket with the other county officers. In 1908 a change was made in the method of nomination. This change, however, was optional. In 1911 there was passed the famous non-partisan judiciary act, which provided that there should be no party designation upon the election ballot, but that nominations should be as before. In 1912 the new constitution provided for direct primary election or petition for nominations, and since then this method has been in force. There is an increasing use of nomination by petition which does not require the candidate for judge to run in the primary. He merely secures the necessary names to his petition and is thus placed upon the non-partisan judicial ballot

which is voted upon at election. This fundamental change in the method of selecting judges has now been in operation long enough to justify certain definite judgments. The survey very carefully sought to determine what, if any, changes are to be observed in the quality of character of the personnel of the bench since the non-partisan system came into being.

Some Effects of Non-Partisanship

The effects noted in Diagram 4 upon the personnel of the bench since 1912 are not intended in any sense as a reflection upon the present

> **THE JUDGES**
>
> THE administration of justice is not a purely mechanical process. Its satisfactory conduct depends more than any industry on the human factor, because the administration of justice deals with the evaluation of human souls, and not with commodities or operations capable of measurement. Among these human factors the judges hold the place of unique responsibility. Their attitude at the trial often determines the result. They have it in their power to suspend sentences, to grant new trials, to eliminate delay, to reduce perjury, to assure better selection of jurors, and, theoretically at least, to pass on motions to "nolle" cases before them. It is obvious that strong judges, capable of inspiring respect and unafraid, may save even an archaic system from absolute failure. No system of administering justice can rise higher than the quality of its bench, although it may go much lower.
>
> —*Criminal Justice in Cleveland*, p. 251

incumbents, nor are they intended to make a comparison invidious in its nature among the present judges. The more important effects are two:

1. *Younger Men on the Bench.*—A ruler laid across Diagram 4 along the line of forty years of age shows only two judges beginning their service under that age before 1912 and eight after 1912. While before 1912 many judges were elected after attaining the age of fifty years, since 1912 no one has been elected of that age or over.

2. *Less Experience in Private Practice.*—The diagram also shows that before 1912 most of the judges were apparently well seasoned in private

JUDGES		
Name	*Politics*	*Date first elected or appointed*
Stone	Rep. Elec.	1885
Dissett	Rep. Elec.	1894
Neff	Rep. Elec.	1895
Strimple	Rep. Elec.	1896
Dellenbaugh	Rep. App't	1895
Wing	Rep. App't	1899
Ford	Rep. Elec.	1899
Babcock	Dem. Elec.	1901
Shallenberger	Rep. App't	1901
Phillips, G. L.	Rep. App't	1901
Tilden	Dem. Elec.	1902
Kennedy	Rep. Elec.	1902
Lawrence	Dem. Elec.	1902
Schwan	Rep. Elec.	1904
Keeler	Rep. Elec.	1904
Chapman	Rep. Elec.	1904
Estep	Dem. Elec.	1906
Vickery	Rep. Elec.	1908
Collister	Rep. Elec.	1908
Foran	Dem. Elec.	1910
Pearson	Dem. Elec.	1912
Gott	Dem. App't	1912
Stevens	Dem. Elec.	1912
Lieghley	Dem. App't	1913
Powell	Rep. Elec.	1914
Levine	Dem. Elec.	1914
Friebolin	Dem. App't	1914
Morgan	Dem. App't	1917
Baer	Dem. Elec.	1918
Cull	Dem. Elec.	1918
Kramer	Rep. Elec.	1918
Phillips, F. C.	Rep. Elec.	1918
Terrell	Dem. Elec.	1918
Day	Dem. App't	1920
Allen	Dem. Elec.	1920
Bernon	Dem. App't	1920

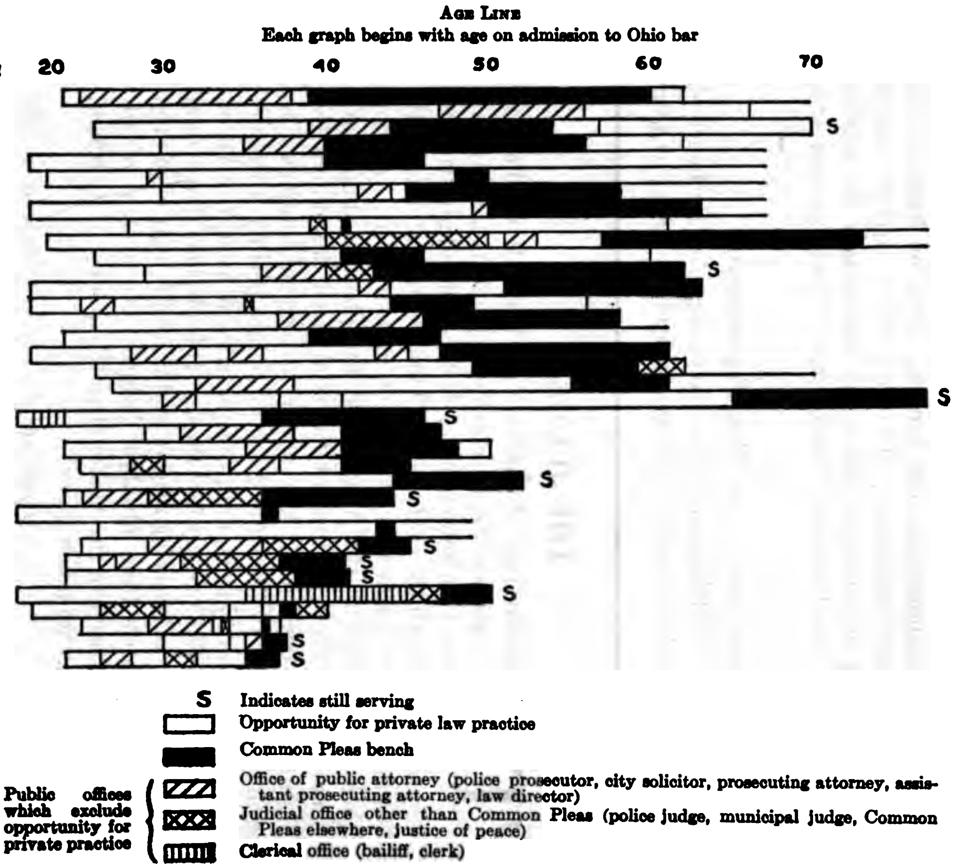


Diagram 4.—The legal career of judges of the Common Pleas Court, 1885 to the present, with respect to their ages and their public and private services

practice of the law, while since that date the majority have been trained chiefly in the office of judge of an inferior court, or prosecutor.

The Politics of "Non-Partisanship"

It is absurd to assert that a mere legislative enactment placing judicial candidates upon a non-partisan ballot can eliminate the interest of the bench in things political. It has merely thrown upon each judge the enormously increased burden of building his own "organization." Before 1912 we had two parties with judges responsible to some degree to one or the other. Since then the judges have had to reckon with other interests in order to secure reëlection. Deference to these interests may or may not be better for the bench than deference to a political party. This depends upon the individual point of view. But the survey points out clearly the considerations which confront the judge seeking reëlection and the line of conduct which these considerations compel him to follow. Chief among these interests are the petty ward or police court politician, the appeal of race and religion, certain labor organizations, and the newspapers.

1. *The Traffic in Influence.*—The atmosphere of the criminal court seems to favor the growth and prosperity of the petty politician. He serves as a kind of political broker. He preys upon both the public and the public official. The person caught in the toils of the law uses him because of his reputed influence with officials, the public official recognizes him because of his real or fancied power to deliver votes. In either case he profits, while the public interest is overlooked and the official is brought to a misuse of his official power.

2. *The Appeal to Race and Religion.*—The following passage from the survey (pp. 263–264) deserves careful consideration by the advocate of a non-partisan judiciary. It describes a new influence upon the judiciary:

> "'In order properly to play the game,' observes one of the more sophisticated judges, 'it is necessary for a judge to attend weddings, funerals, christenings, banquets, barbecues, dances, clam-bakes, holiday celebrations, dedications of buildings, receptions, opening nights, first showings of films, prize-fights, bowling matches, lodge entertainments, church festivals, and every conceivable function given by any group, national, social, religious.' A municipal judge is said to have refereed a prize-fight. Three judges of unquestioned character campaigned by visiting the saloons in the different foreign sections of the city, and were presented to long lines of foreign-speaking voters with the aid of an interpreter. No drinks were bought, not a cent was spent, only handshakes were exchanged, yet this was deemed essential campaigning.

"One of the most disturbing features is the intensifying of racial and religious appeals. A man is elected or appointed because he is a Pole, a Jew, an Irishman, a Mason, a Protestant, and it is sometimes difficult for a committee to reject a candidate without being charged with discrimination. On the other hand, an even more vicious tendency has begun to appear—the formation of organizations with the avowed or unavowed purpose of 'knifing' every candidate who is not of a particular religion, nationality, or color. It is estimated that one such organization last fall, through the expedient of issuing thousands of marked ballots at churches and other places, succeeded in swaying 50,000 votes among the regular nominees. The marked ballot carried nothing to indicate the sectarian nature of the organization, which bore a title similar to that of the Civic League, an impartial organization, and it is not to be supposed that so many voters knew of the dominant motive behind the marked recommendations."

3. *The Influence of Labor Organizations.*—One of the respected leaders of labor says: "The unions have lost faith in the courts; they believe the man who has the influence gets by." This distrust is reflected in very serious efforts on the part of certain labor organizations to elect judges favorable to them and to defeat those suspected of hostility. Within recent years two very able judges have been retired because of the opposition of labor. One of these judges led the ticket in 1912 and was defeated in 1918. The survey states, however, in connection with this activity on the part of labor, that little good can come from the simple partisan view that labor is largely to blame for the unsatisfactory manner in which judges are compelled to preserve their official lives. "The folly of exposing a judiciary to every wind that blows and then blaming a particular wind is apparent."

4. *The Bench as "News."*—Probably the most important influence with which a judge must reckon under a non-partisan system is the public press. While in the Cleveland newspapers editorial support of judges has in the main been wisely given, it is unfortunately true that editorial support is a minor factor in the influence of a newspaper upon elections. It is as "news" that most people learn to know judges, and it is the "news" or "copy" value of a judge that largely determines his continuance on the bench. Some publicity is justly earned by a judge when he inaugurates a reform or hands down a decision on an important and unusual question—such publicity means public education But, unfortunately, quantity of publicity seems to be more important than quality. The law of suggestion leads the public to vote for the most widely advertised name. For example, two candidates, hitherto comparatively unknown and of no marked fitness for the bench, have since 1912 been elected because they bore the same names as two retired

judges widely known and respected. A blacksmith once running on the socialist ticket for the Supreme Court carried Cuyahoga County because his name looked and sounded like that of the well-known probate judge. "I don't care what you say about me if you keep on publishing my name," remarked one ambitious official.

In the making of publicity, the rules of newspaper enterprise govern. It is the unique and sensational thing that gets into the paper. Lord Northcliffe is quoted as giving this sovereign formula for "news values." "If a dog bites a man, it is not unusual, therefore it is not news; but if a man bites a dog, it is news." The inexorable character of this law does much to promote the fortunes of the judge who does unusual things as compared with the one who does not. It is not entirely inaccurate to say that the judge who acts like a judge is not good copy, but the judge who acts otherwise "gets the front page." For example, a presiding judge labors for long hours to clear up a badly clogged docket; he works nights and holidays, but few people hear of it. Another judge is prominently featured for having driven in an automobile one evening all the way to Canton with a sporting editor and other fight fans to attend a prize fight. Long study of a difficult case is not noted, but the newspaper carries the story that "Municipal Judge . . . ate candy as he listened to testimony Friday. 'It keeps one from gettin' nervous,' the Judge says."

It has been aptly said that a relationship grows up between the reporter and the judge similar to that between the bumble bee and the clover. The one exploits the other. The reporter needs stories; the judge can give them. The judge needs the publicity which the reporter can provide.

In the contest for publicity, service on the criminal bench is a distinct advantage. There are more "stories" there; hence it has become customary for judges to seek service on the criminal bench in election year. The schedule is apparently conveniently arranged to provide judges seeking reëlection with this needed means of publicity. The survey gives in detail the manner in which these terms have been arranged.

§ THE MUNICIPAL ("POLICE") COURT

The formation of the Municipal Court in 1912 marked an epoch in the history of the city. A splendid form of organization was provided, with provision for a chief justice with ample powers. Two of the 10 judges sit in the criminal branch, or "police court," and try misdemeanors, violations of city ordinances, and conduct preliminary hearings

in felony cases. The rooms in which court is held are located in the old Champlain Street police station, and are indescribably sordid and inadequate. The decorum which the judges have permitted in these rooms is thus described in the survey: "In neither room did the proceedings reveal the necessary dignity of a court. The rooms were crowded with lawyers, defendants, witnesses, police, hangers-on, and sightseers, many chewing gum or tobacco, even when addressing the court. In Room 2 an attorney was waving a cigar in the judge's face by way of emphasizing his argument. Crowded around the bench were lawyers, witnesses, and officials, almost screening from view the testifying witness. Others in the court-room were standing about talking and were occasionally asked by the judge to be quiet in order that he might hear the testimony—this, although the witness chair was placed directly against the judge's bench."

"JUSTICE in the minor courts—the only courts that millions of our people know—administered without favoritism, by men conspicuous for wisdom and probity, is the best assurance of respect for our institutions."

—CHARLES E. HUGHES

"In order to make themselves heard in this court-room, lawyers and others have to lean over the bench to address the judge. This produces an impression of a confidential communication, which, although false, lends color to the belief that certain lawyers have 'pull with the judge.'"

No Separate Sessions

All sorts and conditions of cases are heard indiscriminately in the same sessions. Minor and major offenders, men and women alike, await their turns. Cases of robbery, rape, and traffic violations may be heard within the same half-hour.

People and Property

In the hurly-burly of the court's business little time is used to hear individual cases. A most serious discrepancy exists between the time given to decide a civil case involving a few dollars' worth of property and criminal cases sometimes involving the liberty and happiness of persons. In 1919, 11,888 criminal cases were tried by each judge, while

in civil cases, involving mostly less than $300, the number per judge was 2,422, each of the criminal cases presumably receiving about one-fifth the judicial attention that a civil case received. By a process of division we might with some justification say that the judicial importance of a person brought into police court is one-fifth of $300, or $60.

The Law's Delay

The survey determined statistically that it takes the least time to find a person guilty, a longer time to discharge him, and a still longer time to dismiss or "nolle" a case. Therefore, it is the object of every police court lawyer to get his case continued as many times as possible, wearing down the patience of the state's witnesses through compelling them to spend unnecessary hours and days in the unsavory atmosphere of the court, and perhaps taking the edge off the police officer's zest in his care. This process of delay is achieved through the excessive granting of continuances many times in direct violation of a rule of the Municipal Court itself requiring motions for a second continuance to be in writing.

> "A friend in the court is better than money in the purse."
> —Shakespeare

Friends in the Court

The professional police court lawyers, who have been hangers-on around the court for many years, carry on their work with a peculiar kind of privileged seclusion. When the survey attempted to look into the operations of these professional criminal lawyers, it was found that no record is kept of attorneys in cases before the criminal branch of this court, and that no statistical data could be secured as to the actions of these attorneys.

Some of these lawyers were formerly police prosecutors, in which capacity they made the acquaintance of habitual offenders and professional crooks. Some are city councilmen, with a voice as to the salaries of certain court attendants and a control over votes which a weak judge cannot overlook. Others are connected in various ways with people of political importance. They seek in every way to make themselves useful and friendly to attachés of the court. Inefficient and overworked court officials learn to depend upon the cheerfully given

assistance of these men. Subsequently, when favors are available, these friendly gentlemen are not forgotten. Frequently these attorneys represent a special kind of offender—one will represent prostitutes, another pickpockets, and another suspicious persons. They work in coöperation with professional bondsmen, and until recently combined their trade with that of the professional bondsman. That these men operate with a considerable amount of success is indicated by a table contained in the survey, indicating the dispositions of cases of well-known criminals, some of whom were notorious offenders, but all of whom were represented by practised police court lawyers. This tabulation indicates that in one-third of the cases nolles were secured—a larger proportion than can be found in the ordinary run of cases.

The Office of the Clerk

The present clerk of the Municipal Court is an elective official, chosen for four years by the voters of the city. One of the significant things is that, on account of the passage of the city manager amendment at the election in 1921, it will be necessary to determine some new way of electing the Municipal Court clerk. Many who are interested in court reform hope that some method of appointment will be chosen rather than the present elective system. The survey found that the present clerk and staff have too largely permitted the old system of record keeping, which existed before the establishment of the Municipal Court, to continue in operation under new and infinitely enlarged responsibilities. Both in the survey report on criminal courts and on prosecution there is an extended discussion of the cumbersome and inadequate system which now obtains. The maintenance of such an inadequate system is a very great adjunct to the police court hangers-on, the shysters, and the professional bondsmen. The activities of these parasites depend to a large extent upon the assurance that they will leave no tracks behind them and that the watchful interest of the press and the public will be prevented from taking action because of a lack of information. In Mr. Bettman's report on prosecution reference is made to an improved system of record keeping, and Mr. Bettman has filed with the Foundation material which would make such a system possible of operation.

The Criminal Branch of the Common Pleas Court

Organization and Jurisdiction

The Common Pleas Court is the center of the judicial system of the state of Ohio. There are 12 judges of the Common Pleas Court

Cuyahoga County, holding office for six years. Their salary is $8,000 per year. This court has in its criminal jurisdiction all felonies upon indictment of a grand jury and other offenses, where exclusive jurisdiction is not given to an inferior court. It therefore disposes of all the serious cases and most of the misdemeanors from the country districts of the county. When the survey was made, four of the Common Pleas judges were sitting regularly in the criminal division. The assignments to the criminal division are made by a system of rotation, although it is common knowledge that judges whose election is approaching are allowed, through arrangements with other judges, to sit in the criminal courts. It is also very common for new judges immediately after election to be allowed to go there. It may be said as a general proposition that all judges who are approaching election have the opportunity to sit in the more spectacular and "newsful" atmosphere of the criminal court.

The physical arrangements are a handicap to efficiency. Two court-rooms are in the old county courthouse on the public square. These rooms are dingy and inadequately provided with equipment for taking care of the people concerned in the cases and the spectators. The decorum is a great improvement over the Municipal Court, although the formality that is present in some courts in the United States is wholly lacking. The survey states that "it is an exaggeration to say, as did the late Judge Foran, that 'the courts are run like bar rooms.' It is perhaps true that the court-room, in dignity of atmosphere, does not rise above a salesman's display room in a hotel."

The Need of an Executive Head

The only provision for executive leadership in the Common Pleas Court is the system of designating one of the judges as presiding judge. This presiding judge holds his title for one term, and is vested with some slight power in the administration of the court. However, very little power is actually given him, and it is literally true that the description of Artemus Ward's army, which was composed entirely of officers, with everyone superior to every one else, is applicable to the Common Pleas Court. Perhaps the most significant feature of this lack of executive leadership is the present wide-spread feeling that the judges are not performing a full measure of service. They are responsible to no one but themselves and the general public for their actions. The survey cites a comparison between this court and the Municipal Court, which has had a chief justice since 1912. One of the functions of the chief justice of the Municipal Court is to keep a record of the time actually spent by judges

on the bench. This function Judge McGannon, before his difficulties began, performed with efficiency. He not only worked hard himself, but kept his associates busy. A very interesting chart was compiled by the survey, which shows that the lack of an executive head of the Municipal Court after Chief Justice McGannon became involved in the Kagy murder case, caused the court docket immediately to become badly clogged. The court itself fell far behind in its work. The statistics compiled also indicate that during the period when Judge McGannon was on trial for his life, and consequently paid no attention to the business of the court, the number of hours put in by the average judge was much less than when the Chief Justice was actually on the job.

A BUSINESS WITHOUT A HEAD

"THE Common Pleas Court disposes of more than 3,000 criminal cases and 10,000 civil actions a year. In addition to the 12 judges, it has a varying supervisory control over the clerk's office, the two assignment commissioners' offices, the jury commissioners, the jury and grand jury, bailiff's office, and, including the judges, comprises a salary budget of over $375,000 per year. This great enterprise, organized for the business of administering justice, is without any executive head whatsoever."

—*Criminal Justice in Cleveland*, p. 299

CRIMINAL JUSTICE AND THE POOR

In Cleveland, assigned counsel play a large part in the administration of justice. Counsel appointed to defend an indigent person receive 10 dollars for the preparation of the case and 10 dollars up to 50 dollars a day in court. A larger sum is allowed in capital cases. In 1920 assigned counsel were paid, in all, the sum of $32,500. This is about 75 per cent. as much as was paid for the maintenance of the entire prosecutor's office for salaries in the same year. Thus we are already paying out as much for "public defenders" as we are for public prosecutors. And we are probably securing much less for our money. There is no fixed policy with respect to appointing these assigned counsel. As a rule, very young attorneys or rather unsuccessful men are appointed. In important cases, however, the court appoints abler men, and some eminent lawyers have served on such appointments. However, as a rule, the appointing of

counsel is not taken very seriously. The question of adequate representation for the indigent defendant is of very great importance. The survey recommends very strongly the public defender system as a substitute for the assigned counsel system.

THE COUNTY CLERK OF COURTS

The survey states that the office of the county clerk of courts was, when the survey was made, the most satisfactory office connected with the administration of criminal justice in Cleveland. A comprehensive record is kept, with all the information necessary to insure public responsibility for every case passing through the court.

THE PROSECUTORS AND THEIR WORK

The Prime Importance of Prosecution

Prosecution in the criminal courts of Cuyahoga County is conducted in the main by two prosecutors' offices. The municipal prosecutors have charge of the prosecution of cases in the Municipal Court—misdemeanors, violations of city ordinances, and preliminary hearings of felony cases. The county prosecutor and his assistants have charge of cases before the grand jury and in the Common Pleas Court. Their work is in the main concerned with felony cases.

It is not difficult to see that efficient and honest prosecution constitutes the very essence of an adequate administration of the criminal law. If cases are improperly prepared, or if they are carelessly presented, the offender has every opportunity to escape the consequences of his act. The prosecutor has great discretionary power: he may keep cases out of court by a simple refusal to prosecute. The court must largely depend upon his recommendations to nolle a case—so much so that in the survey "nolleing" is usually referred to as a function of the prosecutor, whereas it is technically a function of the court. Moreover, the prosecutors' offices, especially that of the municipal prosecutor, is a clearing-house for the troubles of a great city. Thousands of people call at the prosecutor's offices yearly who are not involved in the administration of justice. They come with petty complaints of all sorts, as well as seeking information concerning real violations of the law. The great bulk of the population receives its impressions concerning the speed, certainty, fairness, and incorruptibility of justice at these offices.

Case Mortality

Another way of indicating the large part played by the prosecutors in criminal justice is through an analysis of what happens to all the cases

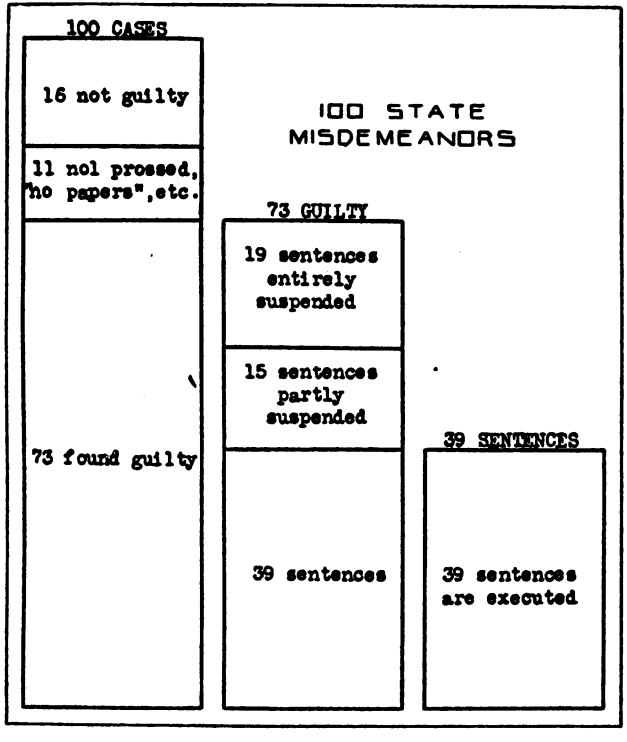


Diagram 5.—What happened to each 100 State misdemeanor cases in the Municipal Court, 1919–1920

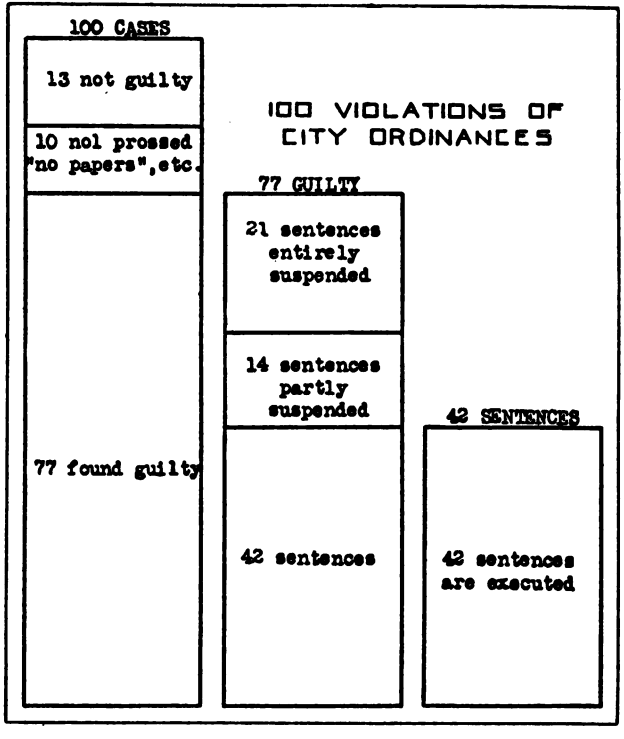


Diagram 6.—What happened to each 100 cases of violations of city ordinances in the Municipal Court, 1919–1920

which come into the system for the administration of justice. Such an analysis made by the survey shows that a large part of the administration of justice is carried on wholly outside the courts themselves. Diagrams 5, 6, and 7 are based upon a tabulation of cases for the years 1919 and 1920:

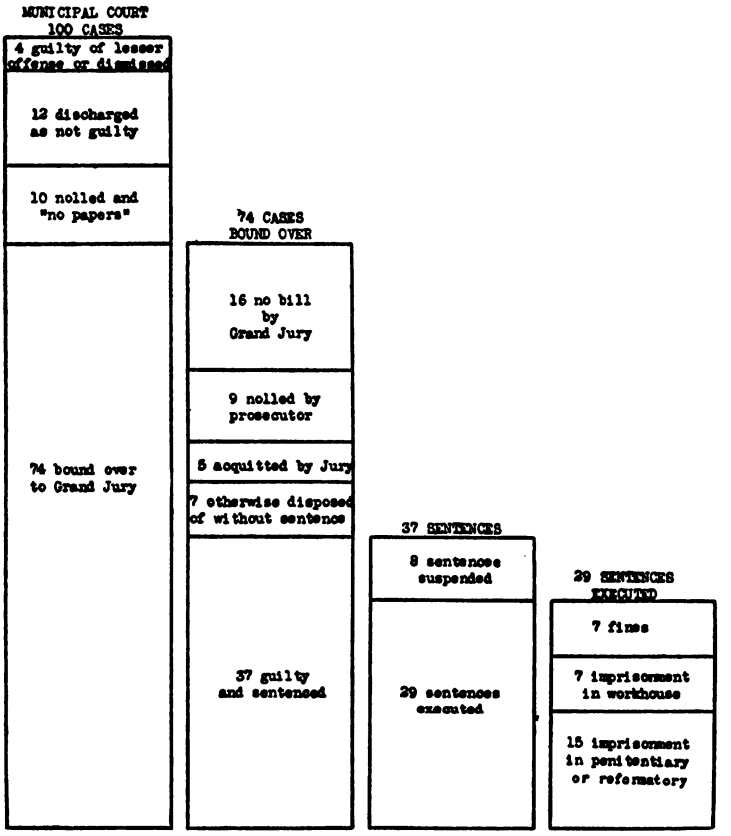


Diagram 7.—What happened to each 100 felony cases beginning in the Municipal Courts, 1919

THE MUNICIPAL PROSECUTOR

Personnel

The force of the municipal prosecutor's office consists of the chief prosecutor and six assistants. These officials are appointed by the city director of law, who is, at least nominally, the chief municipal prosecutor. The chief prosecutor has nominal control over the other prosecutors,

although at the time of the survey this control was not permitted to be vigorously exercised. The survey bases its estimate of the quality of the personnel of the prosecutor's office upon the replies which it received from a questionnaire sent to all members of the bar in Cleveland. The general opinion was expressed in May, 1921, that the men were selected for political reasons and that only one or two members of the office were capable of performing the work. The most severe criticism made in the survey concerning the personnel of the office was of the general practice of giving out appointments to the prosecutor's office, seemingly for no reason except to satisfy the requirements of large racial or national groups in the community. Thus we have men appointed to the prosecutor's office not because they are experienced in the law or in meeting a certain class of cases that come into the prosecutor's office, but because they are Poles, Czechs, Jews, Italians, or Irish. This practice, which Mr. Bettman calls "*the tribalization of prosecution*," has been characteristic of this office from almost the beginning. It was found by the survey that the prosecutors, while their work was conducted with great despatch and confusion during a part of the day, were not in evidence during that period which in private business constitutes a full day's work.

The Business of Prosecution

The survey thus describes the absence of business methods and equipment in the prosecutor's office. "The office of the prosecuting attorney of the Municipal Court handles about 75,000 criminal matters a year and actually prosecutes 26,000 criminal cases in a year. Yet that office has no managing clerk or any other clerk; it has no files and no records; it has no stenographers; it drops cases with or without filing a prosecution, entirely without any statement or record of reasons for this action. No record is made of information which it receives, so that the particular assistant who tries the case has in his hands no data and, with rare exceptions, must trust to luck as to what the witness will say. There is no specialization of work. There is none of the efficiency of organization characteristic of a large modern private law office. It is all largely a game of chance. The record system of the criminal branch of the Municipal Court is inadequate and inefficient, so that it would be impossible for the public or even the chief prosecutor actually to ascertain or appraise the work of the assistants. Observation, made by the survey, of prosecutors conducting cases before the court indicated that their work is habitually casual, careless, perfunctory, and inefficient. There is a dangerous laxity in the care of affidavits. An affidavit remains in the hands of the prosecutor who prepared it until he finds it convenient to

carry it to the office of the clerk of the court. The carelessness with which they are handled furnishes opportunity for the mysterious disappearance of affidavits and such disappearances take place occasionally." (Pages 114–120.)

THE COUNTY PROSECUTOR'S OFFICE

Personnel

At the time the survey was made the county prosecutor's office had seven assistants on the criminal side, in addition to the prosecutor himself. These assistants were all appointed on January 1, 1921, which indicates the fact that when the political complexion of the prosecutor's office changes, the entire force changes. Of the seven assistants, one had been a member of the bar for twenty-one years, while the remaining six averaged about four years of opportunity for private practice. According to the judgment of the 92 lawyers who replied to the questionnaire previously mentioned, only two expressed an opinion that the prosecutors were possessed of the necessary ability and competence.

The Organization and Operation of the County Prosecutor's Office

In general the county prosecutor and his assistants take no part in investigating the crime or molding the proof. He has no machinery other than his busy attendants and a single "county detective," a general utility man for such service. He pits what Mr. Bettman in the survey calls "*serial unpreparedness*" against the carefully prepared case of the defendant's lawyer. He takes the proof in the way it has been prepared by the municipal prosecutor, making the best of what he gets, except that in more serious cases he attempts, sometimes months after the crime is committed, to remedy the defects.

JURIES IN CUYAHOGA COUNTY

"Jurors recruited from the caverns of Ali Baba in the desert," remarked the oldest judge on the bench of this county, with the hearty approval of a large audience of lawyers. This seems to be a characteristic expression of the general dissatisfaction with the average juries of the county, a judgment which is attested by the great number of convictions set aside because of poor jury work, a 600 per cent. increase in acquittals in seven years, and an unwarranted number of disagreements.

In 1915 the old method of jurors, "hand picked" for political and other purposes, was discarded for what was intended to be a thoroughly

impartial carrying out of the theory of jury service. Prospective jurors are selected by an impartial method from the polling list. They are summoned by mail and examined. Their names are then placed in the wheel and are drawn therefrom at the request of the court.

The system is in charge of the jury commissioners, who are, by recent action of the court, the same persons as the assignment commissioners. The survey is convinced that this combination of offices was wise and should produce some improvement.

Avoidance of Duty

Statistics set forth by the survey indicate certain startling facts concerning the attitude of citizens of intelligence and means toward the duty of jury service. The most important of these are:

1. Citizens living in certain "well-to-do suburbs" more commonly ignored the summons than the less fortunate (from the economic point of view) in Wards 11 and 14. Those whose ignorance might excuse them for not responding make a better showing than the "substantial citizens" who knew too much to heed the summons.

2. The "exclusive" suburbs seem to be much more unhealthful than Wards 11 and 14, for a larger percentage of these citizens were excused for "illness" than those living in the more congested areas.

3. The residents of the suburbs were "away" or received summonses "too late" in a larger proportion than the more shifting population at the heart of the city.

These facts are a serious indictment of those sections of society which are commonly the sharpest critics of government.

The Quality of Jury Personnel

A compilation of the occupations of jurors for two months revealed in general that the personnel of the juries of this county is, in occupations and probably in general intelligence, about a cross-section of Cleveland's population. But this is not adequate for the exacting duties implied in jury service. Jurors should be "judicious and discreet persons . . . with integrity and intelligence, with some education and an unwarped outlook on life. Such men are not usually found among the lowest or the highest walks of life. Those who have not the ability to rise to some extent, or are embittered by the experience of poverty, make equally bad jurors with the very rich, whose property interests tend to bias judgment."

It is shown, moreover, that many who are unemployed seek and obtain extended service on juries. Commendable as is any method of

mitigating unemployment, it should not be done at the expense of the adequate performance of a high civic responsibility.

SIDE EXITS FROM THE TEMPLE OF JUSTICE

An examination of Diagrams 5, 6, and 7 reveals, in a very simple manner, the great importance in the modern administration of criminal justice of certain procedural methods of escape from the toils of the law, other than acquittal after a trial in open court. Diagrams 5 and 6 show that of each 100 cases of misdemeanors, or violations of city ordinances, a total of about 45, or nearly half, were nolled or sentence was wholly or

> There is no law without a loophole.
> —*Proverb*

partly suspended. Diagram 7 shows that of each 100 felony cases a total of 26 were disposed of in ways other than through a hearing before the grand jury or a trial in court. Thus, we may venture that certain procedural loopholes of escape, such as are described in the following paragraphs, have come to such prominence as to account for more than one-fourth of all cases started in the criminal courts. The importance of examining these ways of escaping from the law is thus made sharply evident.

"No Papers"

When an arrest is made prior to the issuance of an affidavit, a case goes upon the docket and is called in court. If the prosecutor decides then that the provable facts do not justify a hearing in court, he tells the court that there are "no papers" and that is the end of the case. This "no papering" procedure has no statutory basis and is not recognized in common law criminal procedure. There are no safeguards thrown about its exercise, and, as actually practised in the Municipal Court in Cleveland, the court hears nothing about the case and does nothing about the case but enter "no papers" on the docket.

Pleas of Lesser Offense

The Ohio law permits the Municipal Court, in cases where felony is charged, to accept a plea of a misdemeanor and to discharge the felony case and proceed with the misdemeanor charge. This very important power does not have any safeguards surrounding it, and the survey states

that the present practice of the prosecutor's office in handling such cases is as loose and haphazard as in the case of nolles.

Suspended Sentences or "Bench Paroles"

The very great importance of the suspended sentence in Cleveland courts is indicated by the fact that from 10 to 30 per cent. of felony cases receive suspended sentences, and in offenses less than felonies in the Municipal Court 35 per cent. receive suspended sentences. The whole practice regarding the suspension of sentences is loose. Much of it is of doubtful validity. The practices intended to safeguard it are by no means commonly observed. Sentences of imprisonment are suspended without probation, and sentences of fines are suspended without a condition concerning the payment of the fine. The theory of the suspended sentence, *i. e.*, the idea of a sword hanging over the defendant, is under present practices nothing but a theory. With rare exceptions the suspended sentence is promptly forgotten by everybody, and if the defendant comes back into court upon a new, or even the same, charge, the old sentence is very seldom remembered.

Bail

Among the most commonly condemned features of criminal justice in Cleveland are certain irregularities which have grown up in connection with the giving of bail bonds. There are several steps in the process of justice where bail is given. A bond can be given immediately after arrest, to secure appearance in Municipal Court. In misdemeanor cases the amount of this is fixed by the clerk of the court; in felony cases, by the judge. Later, if at the hearing the defendant is convicted and appeals, or if he is bound over to the grand jury, he again gives bond, the amount of which is fixed by the judge. Thereafter the amount of bonds is fixed by the Common Pleas judge.

The most serious evils connected with bail bonds are:

(*a*) The professional bondsman, the associate of the "runner" and "shyster" lawyer, who makes a business of going on bail bonds.

(*b*) The illogical variation in the amounts required.

(*c*) The inadequacy of sureties.

(*d*) Failure to secure judgment and to collect on forfeited bonds. Statistics compiled by the state auditor indicate that, of the total amount of bail bonds forfeited from August 26, 1916, to May 27, 1919, only 0.6 per cent. was collected. The cost of collection was equal to the amount collected, and there was little if any effort made to issue executions on judgments rendered.

Suggestions to correct the bail bond evil are:

(*a*) The creation of the office of bail bond commissioner by the legislature in 1921 was largely brought about by the efforts of the Bar Association. This office began its work in July, 1921. Its chief function is to pass upon the qualifications of sureties and to enforce forfeited bonds.

In March, 1922, the supreme court declared this statute unconstitutional, but it is still operating under the power of the court to create deputy bailiffs of the court.

(*b*) The new legal requirement of cash bail (G. C. 1579–20) has had some effect upon the evil.

(*c*) The Municipal Court several years ago sought to restrict the operation of the professional bondsman by passing a rule providing for personal bond without surety. The survey points out, however, that the clerks in charge have largely nullified the benefit by requiring some one to "vouch" for the defendant. Thus the professional bondsman becomes a professional "voucher."

The Nolle Prosequi

This motion, commonly called "nolle," means literally and in practice, "To be unwilling to prosecute." It is made by the prosecutor and allowed or overruled by the judge. The Ohio law provides that the county prosecutor shall not enter a "nolle" "without leave of the court, or good cause shown, in open court." There is no such provision for the Municipal Court. In actual practice the granting of a "nolle" is almost entirely within the discretion of the prosecutor, as the judge usually, without question, takes the word of the prosecutor. There has been a rather startling increase in the frequency with which this motion has been used since 1918 (see diagram on p. 13). The survey indicated that 14.27 per cent. of felony cases which had successfully passed the two preliminary examinations were nolled in the Common Pleas Court. Occasionally there is what is known as a "blanket nolle," in which several hundred "dead" cases are thrown out at once.

The chief criticism of the survey regarding the practice of "nolleing" cases is the careless manner in which it is exercised. The prosecutors ask for and obtain nolles with little or no explanation to the court. No record is kept, and in most cases even the prosecutors fail to remember the reason which prompted their action. This gives an opportunity for all sorts of irregularities and for at least the appearance of "inside influence with the prosecutor."

The Motion in Mitigation

In January, 1921, liquor cases resulting in 314 fines were filed in the Municipal Court. Thus the uninitiated public might, by mathematical process, determine that $101,650 would come into the treasury. But in the name of a mysterious legal "motion" $42,135 of this amount was taken from these fines. Of the 314 cases, "motions in mitigation" were made in 193 cases and allowed in 114 cases. Thus, through the magic of this "motion in mitigation," a judge may receive public approval for severity and still receive the grateful appreciation of a large number of "victims."

Not only does this motion provide an opportunity for official hypocrisy of a high order, but it adds again to the law's delay. In the cases referred to, an average of 15.43 days was required to overrule a motion in mitigation and an average of 35.15 days to grant it. Delay always favors the party who can keep alive his motion in mitigation.

Perjury

It is perhaps inappropriate to include perjury in the list of procedural means of escaping the penalty of the law. It has, however, become so common and so seemingly harmless a means of escape that it ranks with other more regular and legitimate methods.

The whole story of the decline in character of criminal justice is told by the statistics on perjury prosecutions in Cuyahoga County, in cases begun in 1919. Out of 3,000 cases heard in that year, only 27 were for "offenses against public justice." Of these, 20 were for bribery and seven for perjury. This means that less than 1 per cent. of the felony cases that year were for a crime which both bench and bar admit is common. Of the 27 cases which were brought to light, only two were found or pleaded guilty. Of these, one was "bench paroled," leaving one sentence executed. The survey impressively notes: "Behind the McGannon trial, therefore, is a community which recognizes the prevalence of crimes against public justice, but seeks to vindicate the law in only a handful of cases in a year for such offenses and allows all but one offender to escape.

"The drugged state of the public conscience is indicated by Petition No. 188262, filed by one of those indicted in the McGannon perjury investigation, against Judge McGannon for balance due for services 'in influencing Mary Neely to change her attitude in her testimony in a lawsuit wherein he was charged with murder.' An attempt was made to withdraw this petition upon the indictment of the petitioner for the crime set out in his own petition."

SUMMARY OF RECOMMENDATIONS FOR JUDICIAL ADMINISTRATION AND PROSECUTION

Single Unified Criminal Court

The survey strongly recommends that Cleveland establish a single unified criminal court similar to that which has been established and is successfully operating in Detroit. This would involve the combination of the criminal jurisdiction of both Common Pleas and Municipal Courts. It would permit the very greatly needed unification of the prosecution processes into one office and go far toward eliminating the lost motion which exists because of the division of jurisdiction between the courts. This step would be revolutionary and would require a considerable amount of legislation. The report suggests that in order to accomplish the needed results, the new court would not be needed at once, and that all criminal business of the Municipal Court could be transferred to the existing sessions of the Common Pleas Court.

A Chief Justice for the Common Pleas Court

The survey has pointed out very definitely the unsatisfactory conditions which result from the lack of an administrative head in the Common Pleas Court. This is a quite generally recognized need, and the Bar Association prepared a bill for submission to the legislature in 1921, which bill, however, was not passed. This reform is essential to the improvement of business in the Common Pleas Court.

Changes in the Mode of Electing Judges

The survey does not go so far as to recommend the abolition of the present elective system of judges, but recommends a great change in the method now in practice. It is deemed by the survey impossible, with the present state of public opinion, to adopt the appointive system of selecting judges. However, it is probable that many of the present evils can be eliminated by providing more protection for a judge already on the bench. Therefore, the survey recommends that judges should be elected for a first term of six years, at the end of which they should run for reëlection for a longer term, and that in each successive campaign for reëlection they should run against their own record and not against a group of other candidates. Thus the question to be decided when a judge completes his term of office is, "Shall he be retired or shall he be retained?" In the event of the retirement of a judge, a special election in which he would not be a candidate would be held.

A Judicial Council

The survey, moreover, recommends that a judicial council be organized,—a perpetual body,—consisting of not less than five nor more than 15 judges, appointed by the chief justices, and holding office during their approval. This would become an advisory body for the judicial business of the court.

The Elimination of Unnecessary Steps in Prosecution

The survey recommends very strongly that the grand jury be dispensed with, except in cases where extraordinary situations require a special inquiry. The grand jury has been eliminated in many jurisdictions, and the matter is no longer one of conjecture or experiment.[1]

Another way of shortening the procedure of felony cases—already in practice to some extent—is by bringing cases directly to the grand jury without a preliminary hearing in the police court. This preliminary hearing in police court may be demanded by any accused person, but in practice it is possible to carry cases directly to the grand jury by presentment instead of the process of binding them over from the lower court.

Business Methods in Prosecution

The survey describes in detail the kind of organized agency of inquiry and prosecution a prosecutor's office should be. Steps should be taken to eliminate the present system of careless handling of affidavits in the absence of files, records, or dockets, the absence of stenographic records of testimony of preliminary examination, and the entire absence of scientific and thoroughgoing methods of investigating crimes. Adequate methods for handling large amounts of business should be installed in each of the prosecutors' offices. A system of record keeping should be established and maintained. There should be a chief clerk in the municipal office, such as has been established in the county office. There should be facilities for investigating crime, including the use of modern psychiatry and kindred sciences. Moreover, there should be a logical division of work among the assistants in both offices to supplant the present hit or miss practice, which is so particularly revealed in the municipal prosecutor's office. Cases differ in grade and kind, and specialization should be put into effect at once under the direction of the chief municipal prosecutor and the county prosecutor. This would mean that the chief municipal prosecutor should become primarily an executive official, qualified by capacity and experience to be the head of a

[1] See the Supreme Court Decision in U. S. vs. Moreland (No. 629, October Term, 1921), decided since the survey was conducted.

large and important organization. Also, he has the power to become a leader for the community in matters relating to the administration of criminal justice. The same is true of the county prosecutor, whose chief function should be, not the prosecution of individual cases, but the general supervision of a large and efficiently organized business office.

Business Methods in Court

The survey has recommended, in some detail, changes in procedure and method for judicial administration. Chief among these are the segregation of trials or calendars, the use of the summons instead of arrests in a large number of cases, stenographic report of testimony in preliminary hearings in the Municipal Court, and a toning up of the general decorum surrounding the operation of both courts.

Abolish the Motion in Mitigation

The "motion in mitigation" has no proper place in the administration of justice and should be abolished.

The Public Defender System

The report on criminal courts gives in some detail the need of a more modern method of handling those cases in which the burden of the defense as well as the prosecution falls upon the state. Mr. Smith recommends that, while the public defender system which has been demonstrated in Los Angeles, and which is now extended throughout the State of California, is a satisfactory, modern, and efficient method, for the present Cleveland can trust this function to quasi-public rather than public hands. He recommends that the New York Voluntary Defenders' Committee be used as a model, and that this organization should take over the work of representing poor persons in criminal cases in the manner now undertaken by the legal aid society in civil cases. This could be controlled by a special committee of the Bar Association, and would be able to do the work of assigned counsel with much greater efficiency and a smaller expenditure of money than is now required. To this quasi-public defender office the Municipal Court judges could refer cases where defendants need counsel for a fair trial. This public defender system, it is hoped, would go far toward eliminating the objectionable shyster lawyer from his most profitable field of employment.

Further Safeguards for the Nolle

The survey recommends that the nolle, which has become such a large element in the history of criminal cases in Cleveland, should be more

adequately safeguarded from abuse. It should be filed like any other motion, and should specify in writing the prosecutor's reasons for declining to prosecute. This change should be effected by rule of court, and it should always be in the court's further discretion, whether the complaining witness should be notified or whether there should be a general notice by publication.

Adequate Probation as an Agent of the Court

The practice of the court, suspending sentences and operating so largely in such cases without information, should be remedied by the establishment of adequate probation departments. While a unified court would make possible the ideal condition of a centralized and well-organized probation system for all sorts of cases, it was recommended by the survey that the Common Pleas Court immediately establish a probation system and that the probation system in the Municipal Court be unified and coördinated to a greater degree than at present.

Improvement of Jury System

The jury system, so unsatisfactory now, could be greatly improved by a simple change in the public's attitude toward jury service. Unless the intelligent citizens of the community assume a different attitude toward their obligations, the present jury cannot be very greatly improved. In addition there should be more safeguards covering the service of summonses, which would put an end to the present wholesale ignoring of the court's call. Excuse from the jury service should not be granted except for very extraordinary reasons, such as a death in the immediate family, or cases of great emergency, or danger of serious or irreparable loss. The present system of maintaining jury commissioners who are competent and non-political in their interests is highly commended.

Adequate Housing for the Criminal Courts

Many of the evils connected with the administration of justice can be traced back to the unsatisfactory housing conditions which are present in both county and municipal courts. Decorum is to some extent dependent upon the physical conditions of the court-room, and decorum is one of the fundamental shortcomings of both courts. Adequate housing for the courts, the prosecutors, and other agencies of the courts means that Cuyahoga County must build an adequate building for criminal justice. Great improvement in the operation of our courts cannot come until this is accomplished.

PENAL AND CORRECTIONAL TREATMENT

CORRECTION, PUNISHMENT, AND PUBLIC OPINION

THE survey points out that Cleveland has institutions typifying three different ideas of the way in which offenders should be treated:

The city and county jails belong to the age before prison reform. They typify the medieval view that offenders are the "scum of the earth," and that to purify the soul is to mortify the flesh.

The Warrensville correction farm was conceived in a fine idealistic period. It was the fruition of a splendid dream, but the revolution which it signified exhausted itself in marking out broad boundary lines. It ignored fundamental details.

The Boys' Farm at Hudson was conceived and built in the same humanitarian era as the Warrensville institution. But it combined the ideal with the practical. It is based upon sound philosophy of treatment and is marked by "that triad of modern progress, common sense, scientific understanding, and effective sympathy."

The City and County Jails

The city jail is housed in the old Champlain Street police station, and is under the general management of the city division of police. It is used only for the detention of prisoners charged with violations of ordinances, and other minor offenses. Except for a few unusual cases, the period of incarceration is from twelve hours to four days. The present condition of this jail is indescribably wretched. Its administration is characterized not only by lack of adequate facilities, but also by the absence of humane treatment of those confined there. The abandonment of the city jail will be necessary during the year 1922, on account of an extensive public improvement which will use the land on which the jail is now located.

The county jail is used for the imprisonment of men and women charged with a felony who are awaiting or undergoing trial. It is under the jurisdiction of the sheriff of Cuyahoga County. It houses something over 100 prisoners. No discussion is needed to convince the people of Cleveland of the utterly unsatisfactory condition of this jail. It partakes

of most of the sordidness of the city jail. Its administration allows too great commingling of prisoners and lacks safeguards against the smuggling in of contraband articles. Moreover, the guards employed are of a very unsatisfactory type.

The general recommendations of the survey concerning the city and county jails are that, pending the building of a new structure which is now contemplated, the administration of both be improved and some attempt be made to put them in a clean and sanitary condition.

The Department of Welfare and the Warrensville Workhouse

The Department of Welfare of the city of Cleveland is administered under a director appointed by the mayor. This director has jurisdiction over the Warrensville correction farm, the Boys' Farm at Hudson, the Girls' Farm, and the probation office. The survey states that there has never been sufficiently well-defined administrative unity within the department. It states that it is a paper federation of bureaus and departments without administrative cohesion. Recommendations are made which are intended to supply the administrative unity necessary under the Director of Welfare.

The Warrensville workhouse is located on what is known as the Cooley Farms at Warrensville, 12 miles from Cleveland. The workhouse building is a comparatively new two-story structure, well lighted and ventilated, and built in the form of a square inclosing completely a large yard used by prisoners. The institution is built on the dormitory plan, and has only a few cells. The census of the building varies between 400 and 800, with 480 as a fair average. Of these, about 50 are women. The inmates represent all grades of offenders, from petty short-term delinquents to prisoners charged with serious crime or habitual offenders charged with ordinary offenses. There were at the time of the survey about 40 prisoners charged with serious crimes. The criticisms of the survey apply both to the style of the building itself and to the administration at the time when the survey was made. The survey states that it is very unfortunate that the building should have been built on the dormitory plan, which permits too great a commingling of various kinds of prisoners and which defeats the purpose for which they were sent. The criticisms of the administration are much more serious. The survey found a general lack of planning at the head of the institution. There was a tendency on the part of each officer to treat infractions of rules much as he deemed wise without definite control by the superintendent. The employment of prisoners was marked by prevailing idleness and lack of well-planned work. There was a lack of use of prisoners in road work,

probably on account of an excessive number of escapes during the past year.

The survey recommends improvement in the administration of the institution through a more careful study of the aptitudes and the mental and physical ability of the inmates, through the introduction of educational facilities and more adequate reception, classification, and credit-marking methods.

The Cleveland Boys' Farm at Hudson is highly commended by the survey. This institution is located about 35 miles from Cleveland. It is a city farm colony institution, with eight main cottages for the housing of the boys. The population usually averages about 140 boys, who are selected by the superintendent from among the boys who are committed to the Detention Home by the Juvenile Court. The survey found that the superintendent is able, through wise and practical management, to utilize in a very marked degree the facilities that are at hand, that he has a definite, well-organized plan of operation, and follows humane, though practical, methods in his administration.

The Girls' Farm, which is located at Warrensville, was, at the time when the survey was made, in a process of reorganization. After this process was complete, the survey reëxamined the institution and found that many of the practical features of the administration of the Boys' Farm have become characteristic of this institution for girls. It is now a thoroughly modern institution in its administration, and is hampered only by a lack of a proper building and proper facilities for administration.

PAROLES

From the Workhouse

The Director of Welfare, with his parole office, and the superintendent at the workhouse jointly exercise the power to parole from the Warrensville workhouse. The survey speaks in commendatory terms of Director Blossom's great interest in the work of parole, and the extent of his investigation of the circumstances of individual cases. However, a more extensive record system, both in the parole office and at the workhouse, is recommended.

From State Institutions

State institutions were not included in the survey, except in a somewhat casual manner, in coöperation with the careful and extensive work done by the Bureau of Public Efficiency in Columbus in investigating state institutions and state methods of correction. The so-called Norwood Bill, passed in 1921, is strongly condemned by the survey. This

bill has struck a very serious blow at the indeterminate sentence law by authorizing the courts to fix within the limits fixed by law a minimum duration of sentences in felony cases. In its place the survey recommended the enactment of a law similar to a New York law, under which the court sentences the prisoner to the penitentiary for the statutory maximum, but with no minimum. After the prisoner is received at the penitentiary a study is made of the information which the court had at the time of sentence, and of all information the parole board and the penitentiary officials are able to secure. This is embodied in a report and forwarded to the judge presiding in the court where sentence was imposed, with a recommendation of a specific minimum sentence. The court then has the opportunity to determine, upon the basis of more adequate information than he could possibly have at the trial, the minimum sentence which the prisoner should receive.

PROBATION IN THE MUNICIPAL COURT

Cleveland was one of the first cities to establish a probation department in its Municipal Court. The survey, however, finds that little or no progress has been made in this line of work since it was started many years ago.

The probation system of Cleveland's Municipal Court has two branches—one a probation office for adult men and the other for women. Technically, both offices are under the probation officer for men. But in fact they are now two entirely separate offices without unified plans and with inadequate facilities for carrying on their work. The chief probation officer has two assistants, and the probation officer for women has two. These six officers are attempting to do the work which should be done by 20 officers. They have no clerks or typists. The filing system is not adequate for the work, and the entire surroundings are such that good work is almost impossible. The men's probation office is conducted with an utter lack of efficiency. There is no administrative ability back of the work. The chief probation officer is without a constructive plan, but makes an effort day by day to meet the problems of the day. The probation officer for women and her two assistants have a much better plan of operation. There is a definite plan of work, a consistent and fairly well-kept record, a fair system of reports, and a follow-up system, which is as well thought out and administered as facilities will permit.

The Women's Protective Association, a private organization supported by the Community Fund, has an office in the Municipal Court. Its work is unofficial. It gives assistance to both divisions of the proba-

tion department, and is willing to furnish field investigators and to assist in clerical work. However, it cannot be effective until a harmonious working basis is established between itself and the official probation department. Such a relationship does not now exist.

PARDONS

The Ohio Institute for Public Efficiency published, on December 1, 1921, a report of a study of Ohio's pardon system, which is published as an appendix to the survey. The following is a summary of this report:

Ohio's Pardoning System

In the past twenty-two years 837 pardons and commutations have been granted to prisoners in the Ohio penitentiary by the respective governors, or an average of 38 per year. The number varies greatly from year to year, as shown in three successive years, when 21, 41, and 75 were granted. Nearly two-thirds of those committed for first and second degree murder during the ten-year period 1900 to 1909 inclusive, totaling 211, were released by pardon or commutation before November 15, 1921. On this date only nine of the 211 remained.

In the six-year period, ending June 30, 1921, 384 individuals received 393 pardons and commutations after serving an average term of three years, four months, and twenty-six days each. The average time served by the 121 "life termers" thus released was six years, eight months, and twenty-five days each. Of the 93 first-degree murderers received from 1900 to 1909 inclusive, 23 served less than ten years, and of the 118 second-degree murderers similarly received, 55 served less than ten years.

The principal reason officially assigned by governors for granting pardons was "recommended by the boards of pardon and clemency." This, however, is not a sufficiently definite statement. In some cases the real reason appeared to be the view that the minimum sentence was too long. Forty-one were released during the six-year period ending June 30, 1921, in honor of certain holidays.

Three were released because of "lack of mental responsibility." In other words, a person convicted of "assault to kill" is turned loose on a community because of a mental condition which increases the probability of another offense.

It is recommended by the survey that pardons be granted only in cases where adequate evidence indicates that an injustice has been done, and in order at least partially to remedy that injustice; or in rare cases

to reward extraordinary deeds of heroism or fidelity. In all other cases where executive action is deemed necessary it should be in the form of a commutation which should be granted only where adequate evidence indicates that the minimum sentence was unduly long and that the interests of society, as well as the individual, will be promoted. The sentimental practice of granting holiday commutations with little or no apparent other reason should be discontinued.

PROPOSED NEW CRIMINAL COURTS BUILDING

The very great importance of the building of a new structure to house the criminal courts and the various jails is indicated by the inadequacy of the present quarters. In all departments studied by the survey there is an appalling lack of housing facilities and a tendency on the part of public officials to excuse their shortcomings because of this inadequacy. Therefore, the improvement of criminal justice in Cleveland demands that something be done immediately to provide proper housing of the institutions for administering criminal justice.

Six times the people of this county voted upon the question of issuing bonds for a new criminal courts building. In five of the six instances the proposal was disapproved. At the present time the whole matter is seemingly deadlocked by a determination on the part of the voters not to allow the construction of such a building under present plans.

The survey made some study of the plans and of the various proposals submitted by public and semi-public bodies, and recommended that police headquarters, criminal courts, prosecutors' offices, and county and city jail should be housed in a single building of the office building type. The Juvenile Court should be eliminated from the plans for this building and should be provided for either in a new building to be erected adjacent to the Detention Home or in a public school building.

THE JUVENILE COURT

The survey's consideration of the Juvenile Court was limited chiefly to the scope and methods of the work of the probation department and to the important question of the application of psychiatry to the work of the court.

It found that the administrative shortcomings of the probation department were very great. The chief probation officer's time was too largely given to individual cases. His record system was inadequate, too much depending upon his ability to remember details. The mass of work which he attempted to do himself was so great as to prevent

him from adequately seeing his problem in its larger aspects, while too great discretion was permitted to rest with his office in matters involving very vital interests of persons coming to the court.

When the survey was made the Juvenile Court was entirely dependent upon the schools for mental examinations of cases of juvenile delinquency. The psychologist for the Boys' School conducted examinations of children committed to the Detention Home, while certain cases selected by the judge are examined by the head of the school psychological clinic.

Recommendations

The most important recommendations of the survey relating to the Juvenile Court are:

1. That an adequate probation department be organized under the direction of a chief probation officer having rank and salary equivalent with that of an assistant superintendent of schools. This officer should be a competent executive, able to get the maximum coöperation of other related social agencies, and should give his time wholly to the overhead executive work of his office.

2. Mental and physical examinations of children brought into the court should be given not merely in those cases in which the judge or probation officer, after "sizing them up," require it. "There should be a mental and physical examination of every child brought into the Juvenile Court or its probation department, and an extensive interchange of records of examinations among all the agencies interested, before the case comes up in court for formal action." The survey suggests reasonable ways in which such examinations may be provided.

MEDICAL SCIENCE AND CRIME

SCIENCE AND CRIME

THE purely vindictive theory of crime treatment dies hard. This theory views punishment as a means of frightening the criminal from repeating his offense and by the severity of the "lesson" to deter others from similar wrongdoing. Its weakness is in the fact that it neither cures nor deters.

"There was a time when medicine was practised on much the same basis. All the ailments of the human body were believed to be machinations of evil spirits. The reactions of chemical substances in the

> THE only way to stop us is to find out who and what we are and what we're good for. Then you've got to make punishment severe enough or opportunity good enough for us. You don't do either now.
>
> —*Statement of Expert Criminal*

retort were thought to be presided over by good and evil spirits. The scientific attitude which has removed these personal elements in the fields of pure science and of medicine is capable of doing the same in criminology.

"When the public becomes convinced that there are in the community specially trained persons who understand delinquency and who are able to evaluate the various factors in behavior difficulties, the result will be like that already witnessed in the field of public health. Few persons today have to be coerced to be protected against disease or to be treated when they are ill. When the public has learned to regard behavior difficulties, delinquency, and crime as manifestations of mental difficulties requiring treatment, just as physical ailments do, and provides institutions and officers to deal with these troubles as mental disease, rather than from the point of view of punitive justice, we shall be able to record advances as notable as those of the public health

movement. And just as public health machinery has made large cities and small country villages healthy places in which to live, so this new public mental health movement will make our communities safe and sane places in which to live." (P. 440.)

THE ADULT CRIMINAL

More has been done in Cleveland in utilizing medical science in dealing with the juvenile offender than with the adult because of the slowness of public opinion to admit the lack of personal responsibility on the part of the adult offender. The survey found that "except for the occasional perfectly obvious case, no use is made of medical and more especially mental treatment in dealing with adult offenders."

And yet "experience in some of our reformatories and penitentiaries has conclusively shown that the study of mentality yields information which no modern institution can neglect. One need merely refer to the well-known work at Sing Sing, Concord, Elmira, and Bedford Hills, not to mention the institutions of New Jersey, Michigan, and Illinois, and especially the United States Disciplinary Barracks at Fort Leavenworth, Kansas. And what has come more and more to be considered indispensable in these institutions has proved itself of similar value to the courts. Mental examinations and personality studies are now insisted upon as a *sine qua non* in the work of practically all the juvenile courts of the country. The municipal courts of Chicago, Boston, Detroit, and Baltimore have psychopathic clinics or laboratories to which are referred all doubtful cases." (P. 447.)

Recommendations for Study of Adult Behavior Problems

1. A chief psychiatrist empowered to appoint three deputy psychiatrists, one psychologist, and one assistant psychologist, should be appointed by the judge of the Probate Court.

2. This staff should examine and pass upon all cases coming before the Probate Court, the Municipal Court, and the Court of Common Pleas in which the question of insanity, epilepsy, or mental deficiency is raised. Also, in so far as possible, this staff should examine all persons coming before the Municipal Court. The chief psychiatrist should present to the court, in writing, a statement of the findings and opinions of his staff in each case examined, although in cases of doubt or dispute the court should be empowered to appoint a special psychiatrist to examine the case.

3. The services of this staff should be available for prosecutors, both city and county.

4. There should be a mental health officer of the police department, who should devote his full time to the mental problems of the police force and of police work. He could be used in training policemen, make mental and personality examinations of candidates for appointments, and assist in determining promotions, especially to the detective force. He could also be present at special examinations of suspects and assist in securing confessions from them.

JUVENILE BEHAVIOR PROBLEMS

"To those who look back from a secure position in society upon an adventurous and unlucky childhood or youth, it must appear that every individual has been, at one time or another, more or less delinquent. 'There, but for the grace of God, goes John Bunyan,' expresses their unconscious feeling when they consider criminality." While this wide-spread feeling may permit the public at large to look with some sympathy upon juvenile delinquency and to permit a more scientific method of dealing with juvenile delinquents, it does not adequately explain the problem of delinquency to one who would differentiate between the significance of a single act and a series of reactions shown in the career of a delinquent individual. In other words, acts of delinquency, which appear to the ordinary person identical, may actually have been produced by entirely different kinds of individual characteristics. One may be the mere outbreak of the mischievous spirit of a normal person, while the other may be a manifestation of a hidden but potential criminal tendency. The only way to discriminate and thus to treat properly the various behavior problems of juvenile delinquency is through the assistance of persons skilled in psychiatry.

Such skill in scientific treatment of criminality is in Cleveland most inadequate and scattered even for juvenile delinquents, and is practically non-existent in the case of adults.

A Children's Institute

An outstanding feature of Dr. Adler's report is his recommendation for the creation of a children's institute, to be under the jurisdiction of the board of education, and to furnish service to all the organizations which need the expert service in mental health. Under this institute there should be mental health stations, which should resemble dispensaries rather than hospitals. Every effort should be made to get visiting nurses, policemen, and such institutions as the Juvenile Court, the Humane Society, and the public school teachers to avail themselves of the services of these stations.

Dr. Adler points out that, in Cleveland, the best plan would be to establish a psychopathic hospital as a part of the city hospital, and ultimately a psychiatric institute in connection with Lakeside or Fairview Hospital, in addition to the proposed "children's institute." Only in this way can the large number of behavior cases which require observation in a city as large as Cleveland be adequately cared for.

THE OBSOLETE OFFICE OF CORONER

When the survey started, the Cleveland Academy of Medicine appealed to the Foundation asking that attention be directed to the distressing need either of drastic legislation reforming the coroner's office or its complete abolition. Consequently a study of this office was added to Dr. Adler's report.

Shakespeare, in writing Hamlet, sought to bring some comedy into one of the world's most serious plays. The high spot in this bit of humor—when one may imagine the Elizabethan audience indulged in its loudest burst of laughter—is a reference to the "crowner" or coroner —a joke 300 years ago.

CROWNER'S QUEST LAW

First Clown: "Here lies the water; good: if the man go to this water and drown himself, it is, will he, nill he, he goes; mark you that; but if the water come to him and drown him, he drowns not himself; argal, he that is not guilty of his own death shortens not his own life."

Second Clown: "But is this the law?"

First Clown: "Ay, marry, is't: crowner's quest [coroner's inquest] law."

—HAMLET

Unlike most humor, the coroner's office becomes funnier with age. The arresting bit of seriousness is the wonder at its survival in the midst of the growth of civilization in America.

The office of coroner is governed entirely by statute. It does not appear in the state constitution—a fortunate circumstance for those who seek to abolish it. The coroner's chief duty is to determine in cases of sudden or unexplained death the causes of death and whether it resulted

from unlawful means. In the latter case he must attempt to fix responsibility for the crime and name the perpetrator. The coroner is elected at the November election in even years. The coroner's staff is appointed by the county commissioners. Thus the coroner has nominal jurisdiction over his subordinates but cannot appoint or remove them.

The duties of the coroner are as follows:

The coroner holds "inquests" which consist of inquiries concerning the "deaths supposed to have been caused by violence." This includes summoning witnesses, taking testimony, and the making of a report. The coroner is largely his own guide as to the deaths over which he holds inquests. He selects physicians to hold autopsies in certain cases where he deems it necessary, and is nominally in charge of the county morgue, although morgue keepers are appointed by the county commissioners.

The main duty of the coroner being to determine the exact cause of deaths brought about "by violence," it is interesting to note what sort of determinations have been made in individual cases. The following, taken from the list of causes of death recorded by the coroner in 1919, are important indications of the sort of assistance which the coroner gives in law enforcement. They stand impressively not only as indications that the exact causes of death are not determined in Cuyahoga County, but as evidence that the humorous character of "crowners quest law" did not die with Shakespeare:

No. 22942: "Could be suicide or murder."
No. 23178: "Aunt said she complained of pneumonia, looked like narcotism."
No. 23203: "Believe strychnia used—viewed as suicide."
No. 23241: "Looks suspicious of strychnine poisoning."
No. 22964: "Found dead."
No. 22990: "Head severed from body."
No. 23035: "Could be assault or diabetes."
No. 23187: "Diabetes, tuberculosis or nervous indigestion."
No. 23253: "Consider it tuberculosis."
No. 23484: "Found crushed."
No. 23512: "Could be diabetes or poison."
No. 23551: "Died suddenly after taking medicine."
No. 23605: "Died suddenly."
No. 23670: "Loss of blood."
No. 23686: "Shock."

The survey recommends that the office of coroner be abolished and a law similar to the New York or Massachusetts law creating a medical examiner be enacted.

THE BAR, THE PRESS, AND THE PUBLIC

THE ATMOSPHERE IN WHICH JUSTICE IS ADMINISTERED

"PUBLIC opinion" is inchoate, it is irresponsible, it cannot fight back when it is assailed, it may be to blame and it may not,—no one knows and no one can know,—therefore it is blamed for most of our shortcomings. But it does have certain characteristic and somewhat specific tendencies. It does demand severity at times and permits laxness at other times. Consequently it is a factor which can be made the subject of study and investigation.

The survey could not and did not go into the vast ramifications implied in a study of why the public permits certain things to be done. It did, however, select two of the outstanding forces which in any community influence, on the one hand, the administration of justice, and, on the other hand, the attitude of the public itself. These two influences bear a great share of the responsibility for the condition of criminal justice as it is now administered. They are the bar and the press.

THE RESPONSIBILITY OF THE BAR

In the last analysis, the bar cannot escape in a large measure the responsibility for the quality of the administration of justice. Judges and prosecutors are recruited from the legal profession; the prevailing standards of the bar inevitably influence the quality of judicial service, and the public must largely look to the lawyers, with their intimate knowledge of and association with the courts, for informed leadership. The bar constitutes a specially privileged group which can influence and inform public opinion. The survey gave especial attention to this problem, the reports on the Criminal Courts and Prosecution refer very definitely to the responsibility of the bar, and Dean Pound in his summary volume places great emphasis upon it.

The outstanding observations of the survey concerning the Cleveland bar as a whole are three in number:

1. It is not well educated.

2. Its best members ignore the administration of criminal justice.
3. It is inadequately organized and disciplined.

The Education of the Cleveland Bar

Recognizing the influence of the kind of legal education provided in Cleveland upon the quality of the administration of justice the survey employed Albert M. Kales to make a study of legal education in Cleveland.

The standard of legal education is set by the laws of Ohio and the regulations provided by the State Board of Examiners. At present those

LEADERSHIP OF THE BAR

"YOU are lawyers . . . your duty is a much larger thing than the mere advice of private clients. In every deliberate struggle of law you ought to be guides, not too critical and unwilling, not too tenacious of the familiar technicalities in which you have been schooled, not too much in love with precedents and the easy maxims which have saved you the trouble of thinking, but ready to give disinterested and expert advice to those who purpose progress and the readjustment of justice.

"You are servants of the public, of the state itself. It is your duty to advise those who make its laws; to advise them in the general interest with a view to the amelioration of every undesirable condition that the law can reach, in lightening of every burden law can lift and the righting of every wrong the law can rectify."

—Woodrow Wilson *to American Bar Association, 1910*

taking the State bar examination must have studied law for three years, and must have a general education equivalent to a four-year high-school course. The applicant who studies in Cleveland may do so under the instruction of any attorney in Cleveland or in one of three law schools—the Law School of Western Reserve University, the Cleveland Law School, and the John Marshall Law School.

During the past four years 58 persons from Cleveland, who have been admitted to the bar, presented attorneys' certificates for some period of study. Sixty-six Cleveland attorneys have given such certificates. This

method of study, at one time the orthodox way to prepare for the bar, has now become the least satisfactory. The American Bar Association has condemned this method of preparation, a view the survey shares.

Some idea of the importance of the three law schools can be gained from the estimate of the survey that of the 1400 practising attorneys in Cleveland, 280 are graduates of the Western Reserve University Law School, 300 of the Cleveland Law School, and 20 of the John Marshall Law School. A still more significant indication of the importance of these law schools in the administration of criminal justice is found in the fact that "the members of the bar of Cleveland who have acted as prosecutors in the past twenty years in Cleveland, 27 are graduates of the Cleveland Law School, 11 of the Law School of Western Reserve University, none of the John Marshall Law School, and 11 of other law schools, including one from Harvard, five from Michigan, one from Cornell, and two from Ohio State."

Of the relative amount of instruction provided by the night law schools, which have come to furnish such a large proportion of the bar of Cleveland, Dean Pound states, "It is not controversial that the standard of the night law schools in Cleveland is, in important respects, below the standard of such schools in other cities of the size of Cleveland, and very much below what it ought to be. The night schools in Cleveland require of the student 648 class-room hours as against 1080, the minimum in the day schools. Note what this means in the one matter of criminal law and procedure. One of the Cleveland night schools gives 26 class-room hours to this subject; the other gives 30. On the other hand, not to go outside of Ohio, the three admittedly first-class schools, Cincinnati, Ohio State, and Western Reserve, give to that subject 72, 72, and 90 hours respectively. Yet it is more than likely that the student with one-third of the legal training will be the one who will practise in the criminal courts. With one exception the night schools in Cleveland teach only the subjects required for the bar examination. They have inadequate library facilities, and their students have no time to use libraries if such facilities were at hand. But this means that they have no time to read the books that every lawyer ought to read if he is to form an adequate conception of his duties and of the system of administering justice of which he is to be a part."

The survey does not take those in charge of the night law schools to task for these inadequate standards. It points out that with the standard set by the state the elimination of the night law schools would throw most of their students into the hands of lawyers who would "instruct" them in a still more unsatisfactory manner. Moreover, that it is not

"practicable to call upon the night law schools run for profit to adopt a higher standard. It is an economic fact that, so long as law schools run for private profit may freely enter the field of legal education, no such school can raise its standards above the minimum which will enable applicants for admission to the bar to pass the bar examinations. If one attempts to do so by requiring a longer period of study or more hours of study a week, it will at once lose patronage to a school which keeps to the minimum standard, or it will call into existence a school which will secure students on the basis of the minimum standard. This has already been demonstrated in Cleveland."

The heart of the matter is the lack of adequate standards imposed by the state authorities. The survey shows that "85 per cent. of those who apply for examination pass the Ohio bar examination, whereas in New York 42 per cent. pass (on an average for the past ten years) and in Illinois 62 per cent. (on an average for the past nine years). The only practicable remedy is to raise the standards for admission and thus enable the night schools to exact a reasonable education."

In the matter of the standards for admission to the bar in Ohio the survey recommends that rigid restrictions and supervision be imposed upon private instruction by practising attorneys; that the required four-year high-school course should be completed before the beginning of the three-year legal course; that the character of legal study be prescribed by state authority in more detail; the exercise of visitorial powers by the bar examiners or committees appointed by them; and a rigid inquiry into the moral fitness of applicants, by a committee of the bar.

The Avoidance of Criminal Practice

The replies to a questionnaire sent to all the members of the Cleveland bar developed the startling fact that, except in extraordinary cases and with a very few notable exceptions, the better members of the Cleveland bar ignore criminal practice entirely. Of the replies received, 40 per cent. accepted no criminal cases whatsoever, while only 3 per cent. took criminal practice regularly. The reasons given for not accepting criminal practice were in most cases financial, while others expressed ethical or esthetic objections.

Mr. Bettman's conclusion as to this avoidance of criminal practice is as follows:

"As a result, with some notable and praiseworthy exceptions, the practice in those courts is left to the lawyers of lesser sensitiveness regarding professional practices. The criminal branch of the administration of justice, dealing as it

does with the protection of the community against crime, the promotion of peace, safety, and morals of the inhabitants, the lives and liberties of men, and, therefore, from any intelligent point of view, the more important branch of the administration of the law, has become a sort of outlaw field which many a lawyer avoids as he avoids the slums of the city.

"Criminal practice must be made a field in which the lawyer and the gentleman (in the American sense of that word) can feel at home. And one of the courses which might promote this is for the lawyers, who are both lawyers and gentlemen, to return to the first principles regarding the position of the lawyer as an officer of the law and accept criminal practice. If the man accused of crime knows that he can obtain first-class talent at a reasonable compensation, he will have no excuse for taking his case to the shyster or police court hanger-on, and both the courts and prosecutors will then have some justification for feeling particularly suspicious and cautious in cases in which the defendants retain unscrupulous or disreputable lawyers." (Pages 220–221.)

The Organization of the Bar

Cleveland has a bar association including 800 of the 1400 members of the city bar. For about three years it has maintained an office and a paid secretary. During this time there has been a marked increase in its activity as an organization. It has actively pushed important legislation and has investigated charges against members of the bar. It became very active in the McGannon case, pushing the perjury cases growing out of his trial, and subsequently forced his resignation. It influenced the governor to appoint a new chief justice of its own choosing, and actively campaigned for the election of this new chief justice for a period of years. Its recent record as compared with city bar associations in general is very commendable.

Yet there is needed a more powerful organization of the bar than any voluntary association. Dean Pound states: "The possibilities of corporate organization have been shown abundantly in the experience of incorporation of the lower branch of the profession in England. Bar associations may do much. Yet membership in them is voluntary, and the officers and committees of these associations are busy men, whose primary responsibilities are to their clients and who can give but a residue of their energies to professional discipline. . . . The plan of the American Judicature Society for corporate organization of the bar deserves to be studied and pondered by all lawyers who have the good of the profession and the improvement of the administration of justice at heart."

THE NEWSPAPERS AND CRIMINAL JUSTICE

In the course of the survey those who were studying the police, prosecution, and the criminal courts found themselves encountering the newspapers as a persistent and potent factor in the problems studied. Public officials, lawyers, and private citizens all regarded the press as an unescapable factor in the situation. When it is considered that from 6 per cent. to 25 per cent. of the total news space in Cleveland papers is given over to news relative to the administration of justice, it is quite plain that the nature of what is printed, its quality and underlying standards, and the general atmosphere thereby generated, must exert a most profound influence upon those who administer justice and upon public opinion.

Recognizing the importance of the newspapers, the survey employed M. K. Wisehart, an experienced journalist, to make a study of the Cleveland newspapers in their relation to the administration of criminal justice. His report, while not in any sense an exhaustive treatment of the subject, clearly establishes certain important ways in which the influence of the newspapers is exerted in the administration of criminal justice. These criticisms are somewhat extensively documented by extracts from the newspapers themselves.

Interference by Newspapers in Law Enforcement

The most common form which this takes is the irresponsible publication of statements which embarrass the efforts [illegible] of wrongdoing. Numerous examples are given of publication of news which might very easily warn criminals of plans made by officials for their arrest.

The Making of Atmosphere

In a criminal case newspapers have the power to create atmosphere. Public hostility or sympathy against or for an accused may influence the jury in its determination of guilt. Numerous instances are cited of the selection and treatment of newspaper material in a style plainly intended either to convict or to vindicate the accused. "Human interest" is the excuse, but disregard of the community's standards may be the result.

Another kind of "trial by newspapers" is the deliberate printing of signed confessions or affidavits in connection with a trial. The chief evil in this is that it exposes the prosecution's case before the case comes to trial.

"Crime Waves"

In recent years the phrase "crime wave" has been invented, and it has become fixed in popular belief that periodic outbreaks of crime are occurring. In order to determine accurately whether the great increase in crime publicity during a "crime wave" is really an indication of a great increase in crime, a study was made by the survey of the felonies reported and the inches of news space in four weeks of January, 1919, a month which witnessed one of the most prominently displayed "waves" of recent years.

The net result of the study shows that during the first two weeks 345 felonies were reported as compared with 363 during the last two weeks—not a great increase in crime. But during the first two weeks the three Cleveland newspapers gave 925 inches to crime and during the last two 6642. Thus what actually happened was a "crime news wave."

Newspapers often sponsor and carry through reforms marking real improvements in the administration of justice. Some newspaper campaigns, however, merely secure from public officials a seeming response to the things demanded.

We have already seen the effect of sensationalism upon the caliber of the bench itself. The judge who does the extraordinary or sensational thing is advertised. The publicity he gets insures his reëlection regardless of the real merits of his claim to another term. In this striving for cheap publicity the newspapers constantly lend such judges powerful but pernicious assistance.

THE PUBLIC

What is "The Public" in Cleveland?

A cardinal principle in the philosophy of Dean Pound is the need of radical readjustment of legal institutions to fit the changed conditions of modern urban life. We are striving to meet problems peculiar to modern industrial life with a criminal law and judicial institutions devised to fit rural conditions of generations ago. This need of readjustment is especially marked in Cleveland. The population is unstable; school statistics show that 40 per cent. of the children in the public schools moved during the year 1920–1921. The population is unstable and cosmopolitan, but the institutions are those of a past age.

"The ancestry of the court system and procedure in Ohio goes back to the Ordinance of 1787, which was passed by the Continental Congress for the government of the Northwest Territory. This represented the first effort in this country

to set up a judicial structure independently of the British crown—the courts of the seaboard states having all been developed under royal governors. It was the first time an English-speaking people had been allowed to experiment freely with a whole body of law. The precaution was taken, however, to forbid the legislative arm of the new territory to pass any laws not in effect in the original states.

"General Arthur St. Clair and his group of circuit-riding judges of common pleas, restricted as they were in the letter of the statute, developed a sort of rough-and-ready forest law. The Virginia code seems to have been their model. To members of the survey staff of the Cleveland Foundation who came from New England there were like unfamiliarities, traceable in part to the Virginia origins. These old courts, set up to punish offenses against the peace of the forest and the plantations on its fringe, have been attempting in latter days to pacify urban and industrial populations. The institutions of the Old Dominion, carried into the wilderness by the gentlemen of the Ohio Company, now constitute the government of 800,000 Clevelanders."

Under rural conditions the population, small and homogeneous, could in a measure keep its eyes upon the administration of criminal law and enforce a degree of discipline upon the public official which insured a fairly adequate administration of the law. Today the average citizen of Cleveland knows the lawyers and judges only from what he reads in the newspapers, and most casually from his experiences in the courts of litigation. Under such a handicap the judgment of the average citizen concerning the public official and his knowledge of what is going on is bound to be scanty and confused.

The Need of Information and Leadership

With such a "public opinion" to deal with there is need of strong civic leadership. The survey made some attempt to evaluate this leadership. It found a number of agencies, each in a limited degree interested in the administration of criminal justice. The Cleveland Automobile Club watches and promotes the prosecution of criminal cases involving the theft of automobiles; the Cleveland Chamber of Commerce, through its Safety Council, watches traffic cases, and through its Retail Merchants' Board the prosecution of cases of fraud and shoplifting involving retail merchants; the Humane Society, cases involving children and animals; the Advertising Club, through its Better Business Commission, the prosecution of "fake" advertisements; and the Woman's Protective Association, certain cases involving women. In addition the Civic League reports upon and recommends candidates for office, including judges and prosecutors, while the Bar Association takes a poll of its members on candidates for the bench and publishes the

result. But these agencies, each effective in a limited sphere, do not include within the scope of their interest the entire problem of criminal justice.

In practically all the reports the problem of improvement came ultimately to the need of an informed and active public opinion. Such an opinion should not operate casually as in the past—deeply concerned for a while and then indifferent. It should require a high standard from its public officials and, in order properly to measure their work, should have reliable means of information.

The survey was intended to do no more than analyze the problem in its entirety, to point out the essential improvements, and to show the way by which such changes can be brought about. More important still, it had an educational value. It was intended to capture public interest, to get a larger number of people to think simultaneously about this specific problem, and to use this public interest to insure a permanent result. Those responsible for the survey could afford to indulge a quiet bit of inward amusement when the cynics said "yes, but everyone will soon forget it." It was intended from the beginning not merely to rouse interest, but to use an aroused interest to promote permanent and intelligently directed facilities for informing and leading public opinion. This result has been achieved in the formation of the Cleveland Association for Criminal Justice.

THE CLEVELAND ASSOCIATION FOR CRIMINAL JUSTICE

THE Cleveland Bar Association, in its resolution requesting the Foundation to make the survey, pledged itself not only to co-operate in the making of the survey, but to aid "in bringing about the adoption of the constructive measures recommended." In line with this pledge the Bar Association, after the survey reports had been given to the public, selected a committee "to take up with the Cleveland Foundation . . . the matter of establishing an organization for the promotion of efficient administration of criminal justice." The chairman of this committee was Homer H. McKeehan.

As a result of a number of conferences of not only representatives of the Bar Association and the Foundation, but a number of other civic bodies, there was formed in December, 1921, the Cleveland Association for Criminal Justice.

This organization is an association of the great civic organizations of the city. The number of charter members is 13, including the following organizations:

The Cleveland Bar Association
The Cleveland Automobile Club
The Cleveland Chamber of Commerce
The Cleveland Advertising Club
The Cleveland Academy of Medicine
The Cleveland Real Estate Board
The Civic League of Cleveland
The League of Women Voters
The Women's City Club
The Cleveland Builders Exchange
The Cuyahoga County Council of the American Legion
The Cleveland Chamber of Industry
The Industrial Association

Under the articles of the association each of these organizations elects two members of the board of directors, with an additional 12 selected at large. This board of directors chooses an executive committee and

the officers of the organization. As has been mentioned, the members of the association are organizations, not persons. There is, however, provision for the enlistment of smaller civic organizations, such as church clubs, as auxiliary members, and for interested individuals as associate members.

Some idea of the scope of activities of the organization may be gained from the names of the standing committees:

Police	Prosecution
Juries	Courts
Probation, Parole, Punishment and Institutions	Medical Relations
Finance	Public Office Administration
Legislation	Publicity

In general the functions of the association will be as follows:

1. To exercise a constant surveillance upon the processes of justice, to the end that the public may be constantly informed as to conditions, both good and bad, which exist in the field of criminal justice.

2. To assist those in authority to make improvements, where desirable, in the organization and operation of the agencies of criminal justice.

The association has assured itself of financial support and plans to continue for an indefinite period of not less than five years. As operating director, the association has selected Charles DeWoody, who took office January 1, 1922.

There has thus been created an agency, backed by the aggregate power of the most important civic organizations (including over 50,000 individual members), to represent the all-important public interest in the processes by which life and property are protected in a great city.

The Association for Criminal Justice has been operating since January 1, 1922. While thoroughgoing changes in the methods and machinery of criminal justice are not to be expected so soon, there are ample indications that such changes are under way. The most important service of the association must be that of maintaining a constant check upon the administration of criminal justice, to furnish a means for an intelligent alert public appraisal of the efficiency of law enforcement. The chief means through which this will be done by the Association is through its card index protective system.

On March 1, 1922, the association began the operation of a carefully worked-out system of card indexing felonies. It is possible, through this system, to determine at once the status of every felony and major

crime committed in the county, with complete information as to the nature of the offense, the person or persons arrested, the injured party, and the exact status of the prosecution. It also records every bondsman, with essential facts concerning him, thus bringing automatically to the attention of the association the "professional bondsman." It thus records at every step in prosecution the name of the judge, the prosecutor, the attorney for the defense, and any other official who participates in a case, thus permanently fixing responsibility for every action in every felony case. There is no other one office in the courts or police department where complete information regarding a given case can be obtained. The survey found in every division of its investiga-

> EVERY once in a while the accumulation of miscarriages of justice, scandals, and unpunished crimes arouses the community and it institutes a special grand jury investigation or a specially aggressive newspaper campaign or a survey, and then, forgetting that the accumulation was the inevitable result of the habitual defects in the machinery, it turns to something new, whereupon the old ways go on toward the next inevitable accumulation. Unfortunately, since royalty and autocracy have gone out of fashion, there is no device yet invented whereby the public can leave public matters entirely to public officials and at the same time get the results which it desires. Continuous public check, scrutiny, reform, praise, condemnation, election, discharge, are necessary.
>
> —BETTMAN, *Survey Report*

tion that much official carelessness and favoritism was possible because little or no responsibility could be fixed in a given case. It also found that the police court parasites, such as the political lawyer and the professional bondsman, were dependent for existence chiefly upon the assurance that they would leave no tracks behind. In view of these facts it is easy to see the great significance of such a public check as the card index system worked out by the association. It makes possible the turning of the curative light of publicity upon all the dark corners in the process of criminal procedure.

The association, through its director, has been in constant contact with judges, prosecutors, and police officials. A fine spirit of coöperation

has been shown everywhere. Many important changes have been worked out by officials with the coöperation of the association. One noteworthy example has been the elimination of preliminary hearings in felony cases in the Municipal Court. The survey pointed out the excessive delay in criminal cases caused by the large number of steps in the process. It indicated that in 1919 an average of twenty-one and one-half days elapsed between arrest and indictment. Under the new system in the month of March this was reduced to six and three-quarter days.

Another change worked out with the coöperation of the association has been the promulgation, by the chief of police, of regulations providing for much more effective assistance by the police to prosecution of cases.

Other Indications of More Effective Criminal Justice

A number of marked improvements have been made in the administration of criminal justice which may or may not be the result of the survey or of the efforts of the association. They are in any event the product of an increased public interest in which the survey played some part. The most important of these are as follows:

1. In December the Common Pleas judges formed a new probation department for their court. This department is already in operation, with a fairly adequate staff of workers.

2. The Bar Association, following the suggestion of the survey, conducted a vote among its members as to whether the three Common Pleas judges, whose term expires this year, shall be continued in office. Following this balloting the Bar Association has formed a committee actually to conduct a campaign for their reëlection, thus taking from the judges the burden so hurtful to the dignity and efficiency of judges of carrying on their own campaigns single handed. The Bar Association is already in the process of forming the judicial council recommended by the survey.

3. The prosecutors' offices have been greatly improved, both in personnel and in business methods. The new city administration selected as police prosecutors a much higher type of men and have insisted upon more and better service from them. The county prosecutor has coöperated heartily with the association and has immeasurably increased the efficiency of the office.

4. The grand jury now in operation has very markedly increased the effectiveness of the process of indictment.

5. While it is always dangerous to claim a marked decrease in crime as due to a specific cause, it is nevertheless incontestable that Cleveland

has, in general, since January 1, 1922, enjoyed a marked decrease in the number of crimes committed. This is all the more remarkable when the "crime waves" are disturbing the security of other cities, notably New York. Cleveland can, we believe, rightly claim that it has passed through a winter without a "crime wave."

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